SUPREME COURT, U. S.

No. [redacted]58

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

A. L. MECHLING BARGE LINES INC., a corporation, IRA BOOKWALTER, CULLOM COOPERATIVE GRAIN COMPANY, CHARLES TREASURE, GRISWOLD GRAIN COMPANY, and MAZON FARMERS ELEVATOR,

Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois

JURISDICTIONAL STATEMENT.

EDWARD B. HAYES
WILBUR S. LEGG
Attorneys for
Plaintiffs-Appellants

LORD, BISSELL & BROOK
135 South LaSalle Street
Chicago 3, Illinois
Telephone: 346-7475

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JURISDICTIONAL STATEMENT.

This appeal is filed on behalf of A. L. Mechling Barge Lines Inc., Ira Bookwalter, Cullom Cooperative Grain Company, Charles Treasure, Griswold Grain Company, and Mazon Farmers Elevator. These appellants will sometimes be called plaintiffs herein and the Board of Trade of the City of Chicago which has also filed notice of appeal in this proceeding will sometimes be referred to herein as the intervening plaintiff.

OPINIONS BELOW.

The opinion of the three-judge United States District Court for the Northern District of Illinois, Eastern Division, in this proceeding is reported at 209 F. Supp. 744, and also is attached hereto as Appendix A. The final judgment of that Court is attached hereto as Appendix B. The report of the Interstate Commerce Commission (sometimes herein referred to as the "Commission") dated June 8, 1960, may be found at 310 I.C.C. 437, and is attached hereto as Appendix C. The Commission's Fourth Section Order No. 19346, entered in this proceeding is attached hereto as Appendix D. The proposed report of the Commission's examiner issued in this proceeding on March 16, 1959, is attached hereto as Appendix E.

JURISDICTION.

This action was brought under 28 U.S.C. §§ 1336, 1398, 2284 and 2321-25, inclusive, and 5 U.S.C. §1009, to enjoin and set aside an order of the Commission which relieved certain railroads (over the protests of numerous parties including the plaintiffs and intervening plaintiff) from the long-and-short haul prohibition of the Interstate Commerce Act. The judgment of the District Court dismissing the complaint was entered on September 18, 1962. Plaintiffs filed their Notice of Appeal on November 16, 1962.

The jurisdiction of this Court is confirmed by 28 U.S.C. §§1253 and 2101(b).

The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal in this case. *Interstate Commerce Commission* v. *Mechling*, 330 U.S. 567 (1947); *Dixie Carriers* v. *United States*, 351 U.S. 56 (1956); *A. L. Mechling Barge Lines Inc.* v. *United States*, 368 U.S. 325 (1962).

STATUTES INVOLVED.

The following statutes are involved:

The National Transportation Policy, 49 U.S.C., preceding Section 1; Sections 1(5), 3(1) and (4), 4(1), 12(1) and 13(1) of the Interstate Commerce Act, 49 U.S.C. Sections 1(5), 3(1) and (4), 4(1), 12(1) and 13(1); and Section 10 of the Administrative Procedure Act, 5 U.S.C., § 1009. The foregoing statutes are set forth in Appendix F attached hereto.

QUESTIONS PRESENTED.

Questions presented by this appeal are as follows:

1. In a proceeding under Section 4 of the Interstate Commerce Act, enforced and administered so as to give effect to the National Transportation Policy, was it error for the Commission to refuse to consider evidence that a separately published inbound factor of a two-factor rail rate was too low to cover the publishing railroads' out-of-pocket costs for such transportation services, when only the transportation covered by that non-compensatory inbound factor was subject to the competition claimed as a justification for the fourth section departure for which the Commission granted authorization, thereby requiring the non-competitive reshipping factor of the rate (applicable also to traffic brought to the reshipping point by the alleged water competition) to subsidize the competitive and non-compensatory inbound factor?

2. Is Section 4 of the Interstate Commerce Act applied in accordance with the mandate of the National Transportation Policy when a reduced rail rate departing from the 4th Section is authorized, even though the rate will divert traffic from water carriers, yet still not increase

the net revenue of the railroads proposing such departure, but on the contrary will decrease it?

3. In considering whether a combination two-factor rail rate on corn (to be milled in transit) was compensatory within the meaning of Section 4 of the Interstate Commerce Act, enforced and administered to carry out the National Transportation Policy, was the Interstate Commerce Commission in error in considering the revenue from both factors of the rate while at the same time refusing to consider evidence that the applicant railroads would receive the revenue from the non-competitive reshipping rate factor whether corn was brought to the reshipping point by water or by rail, whereas the inbound rail rate factor would not be sufficient to cover out-of-pocket costs of the applicants on the inbound rail haul?

4. In a proceeding under Section 4 of the Interstate Commerce Act instituted after duly filed protests alleged violations of the National Transportation Policy and of other sections of the Act, was it error for the Interstate Commerce Commission to authorize a rate violating Section 4 without considering duly presented evidence, introduced without objection, that such rate would violate other sections of the Act and the mandate of the National Transportation Policy, and excluding other evidence to like effect?

5. In a proceeding under Section 4 of the Interstate Commerce Act was the conclusion of the Commission that the applicant rail carriers had shown a special case authorizing the establishment of the rate in question (contrary to the examiner's findings) based on requisite findings supported by substantial evidence?

STATEMENT OF THE CASE.

Plaintiff Mechling is a common carrier certificated under Part III of the Interstate Commerce Act and among other things operates barges for the transportation of grain on the Illinois River to Chicago, Illinois from the north and central Illinois grain-producing area. The various other plaintiffs are operators of grain elevators located between the Illinois River and the New York Central Railroad's Kankakee Belt Line west of Kankakee, Illinois.

The intervening plaintiff, Chicago Board of Trade, maintains the principal price-making market for corn in the United States, offering among other things facilities to trade in corn arriving in Chicago by barge, rail or lake vessel for reshipment to destinations east of Chicago.

Applicants before the Commission were various eastern, southern and western railroads which maintain various rail routes by which corn brought from stations on the Kankakee Belt Line to Kankakee may be transported to eastern destinations at the published reshipping or proportional rates.

The Kankakee Belt Line runs roughly parallel to the Illinois River in an east-west direction for about 75 miles in north central Illinois, lying from four to 39 miles south of the river.

On behalf of various connecting railroads the Traffic Executives Association-Eastern Railroads applied on June 28, 1957, to the Commission for relief from the long-short haul rate prohibition of Section 4 with respect to rates on corn products moving to the east from origin stations west of Kankakee, Illinois, on the New York Central Railroad's Kankakee Belt Line. The departure from the long-short haul rate prohibition of Section 4(1) had been created when the New York Central Railroad Company

(N.Y.C.) promulgated a separately-published blanket proportional rate of 5¢ per cwt. (later increased to 5½¢ and then 6¢ per cwt. by general rate increases) on corn brought from any of these origins into Kankakee for reshipment to the east with milling in transit required,[1] and the applicant railroads made the already established reshipping rate from Kankakee applicable to the corn products milled from such corn. The resulting combinations of the 5½¢ inbound rate and the reshipping rates were substantially lower than the local rates from Kankakee and from intermediate stations in Indiana to the same destinations.

The inbound rates to Kankakee from the Kankakee Belt had formerly ranged up to 23½¢ per cwt., and the justification for the fourth section departure alleged by the applicant railroads was the necessity to meet water competition, *viz.*, barge transportation of corn to Chicago for reshipment by rail to the east at the rail reshipping rate from Chicago. The reshipping rates to the east were the same from both Chicago and Kankakee, and remained unchanged.

All the plaintiffs and the intervening plaintiff, as well as many other grain merchants, processors and elevator associations, protested the 5½¢ rate as being unreasonably low in violation of Section 1(5), non-compensatory in violation of Section 4, destructively competitive in violation of the National Transportation Policy and Section 4, and discriminatory against Chicago and against other origin stations near the Belt in violation of Section 3(1). At a hearing from January 29 to February 4, 1958, the

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[1] The application stated that the rate was applicable to corn. In fact, however, the reduced inbound rate could not be applied to whole corn delivered to the eastern destination, because of the milling-in-transit requirement.

Commission's examiner received evidence on all these points without objection.

The evidence showed and the examiner found in his proposed report of March 16, 1959, that the 5½¢ rate failed to meet the inbound carrier's out-of-pocket costs (Appendix E, Sheets 24-25). The examiner recommended that relief not be granted at that rate level. In its report dated June 8, 1960 the Commission refused, however, to consider the propriety of the inbound rate by itself under either Section 1(5) or Section 4(1) on the ground that the rate was a proportional rate having no independent existence and the Commission must therefore consider in the fourth section proceeding only the combination rates rather than the individually published inbound factor designed to meet the competition used as the justification for the fourth section departures involved (310 I.C.C. at 450, Appendix C). In other proceedings, however, both the Commission and this Court had considered such separately-published proportional rates by themselves to test their compliance with the Act. *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 279 U.S. 768 (1929). As partial justification for this latter position the Commission stated that the applicants theoretically could have published single-factor rates, rather than separately-published factors, thereby making less dramatically apparent the subsidization of non-compensatory water-competitive rail rates by revenue from non-competitive rail traffic. Single-factor rates were never suggested at the hearing by the applicant railroads nor explored in the evidence. There is no evidence that the applicants (either as a theoretical or practical matter) could or would have published single-factor rates. No such rates were in issue. If single-factor rates were published, additional questions would arise on which protestants would wish to be heard.

Furthermore the Commission refused to consider the evidence of discrimination against the City of Chicago, again on the ground that violations of other sections of the Act by the rates were not pertinent in a fourth-section proceeding (310 I.C.C. at 451).

Evidence that divisions of the Kankakee reshipping rate, when the traffic was routed via Chicago under the fourth section departure rates the Commission authorized, and changed hands there, led to lower rail charges on the ex-rail grain moving from Chicago to the east than on ex-barge grain shipped from Chicago to the east in violation of Section 3(4), likewise was ignored without comment, but presumably on this same ground.

The Commission failed to make any finding at all on evidence that showed that the barge traffic to Chicago (which the 5½¢ rate was designed to divert to the railroads) was, prior to the publication of the non-compensatory inbound rate, already being transported to the east by the applicant railroads at the same reshipping rate and revenue which they received from their transportation of the corn from Kankakee. Thus the only additional revenue which the applicant railroads can have from barge traffic diverted to the rails by the combination rate is the *inbound* rate, which is insufficient to cover out-of-pocket costs. The result is that the net revenue position of the applicant railroads is impaired by the use of the 5½¢ rate. This Court and the Commission hitherto had held that a special case to sustain an order authorizing a fourth section departure was not shown if the reduced departure rates resulted in a loss of net revenue to the applicant railroads and no showing is made as to why such loss should be allowed. (*Intermountain Rate Cases*, 234 U.S. 476, 483 (1914); *Transcontinental Cases of 1922*, 74 I.C.C. 48, 77-81 (1922)). The applicants made no

such showing and yet the Commission failed to make any finding on this crucial point. The consequence is that the barge traffic is diverted to the applicant railroads with a consequent loss of net revenue to both the barge lines and the railroads.

The Commission recognized the evidence showing that the cost of barge transportation to Chicago was about 10¢ per cwt. *lower* than the rail cost from Belt stations to Kankakee. The Commission refused to comply with the mandate of the National Transportation Policy to preserve this inherent low cost water advantage, dismissing the evidence with the extraordinary conclusion that the inherent low cost advantage of water transportation, which Congress directed it to preserve, will not be preserved when the Commission considers its elimination not to be a destructive competitive practice:

> "The barge carrier is not entitled under the act to have its rates protected from a competing mode of transportation, where, as in this instance, the railroad's efforts to secure traffic do not amount to a destructive competitive practice." 310 I.C.C. at p. 450.

Finally in numerous instances the Commission made findings of fact, particularly as to those facts relating to the competitive effect of the 5½¢ rate on barge transportation, which did not differ materially from those of the examiner, but drew diametrically opposite conclusions that defy logic. An example is found at 310 I.C.C. 443 in which the Commission, after recognizing that the rate would be reflected in the bids made to farmers by the users of the various modes of transportation,[1] compared the corn bids

[1] The lowest transportation rate would, of course, be reflected in prices bid to farmers only to the extent necessary to enable its user barely to overbid the users of competing transportation.

at Missal, Illinois on the Kankakee Belt Line, at Kernan, Illinois, located on a competing railroad and at a river port, duly finding that with the departure rates in force the bid at the Belt station *was* 1.5¢ per bushel higher than the bid at the river port. It then stated, contrary to the testimony, that to make the river bid comparable to the Belt station bid, an adjustment "must" be made in the Belt station bid which made it one cent *below* the river bid (and inferentially not high enough to divert corn from the river port). Yet the adjustment made by the Commission was *not* made by the witness supporting the application who compared rate levels at river ports and Belt stations (see Exhibit 25), and the very witness who gave the prices shown by the Commission testified that at those prices the corn in the area was then moving to the Belt railroad station rather than the river port where it had gone prior to the promulgation of the departure rates.

Similar illogical conclusions were reached from comparisons of raw statistics on barge grain traffic to Chicago in 1956 and 1957.

In its opinion the Court below adopted the Commission's position in refusing to consider evidence of violations of Sections 1 and 3 (209 F. Supp. 747). It, too, declined to consider the subsidization of non-compensatory water-competitive rail rates by revenue from non-competitive rail traffic (209 F. Supp. 748). It failed to consider the evidence of the effect of the reduced 5½¢ rate on the net revenues of the applicant railroads as a whole. It found the destruction of the barge transportation's low cost advantage in violation of the National Transportation Policy to be irrelevant (209 F. Supp. 747). It accepted without any underlying evidence and without rationality the Commission's conclusions as to the meaning of the

bid prices at river ports and the Belt stations (and the Commission's conclusions from raw statistics). The court justified its refusal to consider whether the Commission's conclusions were rational by saying that it would "not consider the 'expediency or wisdom of the order, or whether, on like testimony, it would have made a similar order'." 209 F. Supp. 749.

THE QUESTIONS ARE SUBSTANTIAL.

As have many other cases involving this same traffic, this case presents legal questions whether the Commission has drawn rational conclusions from findings of fact and whether its findings of fact were supported by substantial evidence, in the continuing struggle of water carriers and water shippers to avoid a repetition of their early twentieth century elimination by the financially more powerful railroads through the use of fourth section departure rates.

Also important and symptomatic of a recent Commission trend is the Commission's failure to make adequate findings justifying its refusal to comply with the mandate of the National Transportation Policy that the inherent low cost water advantage be preserved in the administration of all sections of the Interstate Commerce Act. See *I.C.C.* v. *Mechling*, 330 U.S. 567, 579, 580 (1947).

In addition, the case presents important questions on the construction and administration of Section 4 which have the utmost significance for the future of water transportation in this country.

By refusing to consider the evidence that the 5½¢ rate did not cover out-of-pocket costs the Commission, for the first time, has held that a new and separately-published competitive rail rate need not be compensatory, even though

designed to divert the water transportation offered as the only justification for the fourth section order required lawfully to promulgate the rate. The only justification offered for this conclusion is that a non-competitive *reshipping* rate, applicable both to corn brought to Kankakee at the non-compensatory rail rate and to corn brought to Chicago, by the competing water carrier, is high enough to make up the losses from the non-compensatory rate. This conclusion is offered by the Commission without any finding on the evidence showing that the applicant carriers will realize all the revenue from the reshipping rate whether the inbound carriage is by water or at the non-compensatory rail rate. Such a conclusion opens the door to cutthroat competition from non-compensatory rates combined in any fashion with higher non-competitive rates. If this Court does not disapprove this practice, it will require little ingenuity by the railroads to multiply such non-compensatory competitive rates without any limit other than the extent to which they can be subsidized by rail revenue from non-competitive rail traffic. Thus would end any advantage from the inherent low cost of water transportation.

In addition, the Commission, in a singular abdication of its duty to enforce the Act[1] and *contrary to its prior practice*, has treated as irrelevant all evidence of violations of other sections of the Act and of the National Transportation Policy by the non-compensatory rate. It has authorized the fourth section departure created by the rate and permitted the rate to go into effect, holding that it will not

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[1] Section 12 of the Interstate Commerce Act provides in pertinent part:

"... The Commission is authorized and required to execute and enforce the provisions of this chapter; ..." (Emphasis supplied) 49 U.S.C. §12(1).

consider the discrimination against Chicago or the competing elevators on other rail lines in the Belt area in violation of Section 3, the discrimination against the barge lines violating Section 3(4), or the violation of Section 1(5) by the reduced rate.

SECTION FOUR PROHIBITS AUTHORIZATION OF THE COMBINATION RATE. THE WATER-COMPETITIVE FACTOR IS NON-COMPENSATORY AND WATER COMPETITION IS THE SOLE JUSTIFICATION OFFERED FOR THE FOURTH SECTION DEPARTURE.

The fourth section departures authorized by the Commission's order of this proceeding resulted solely from the drastic reduction of the separately-published water-competitive inbound rate to a non-compensatory level. The barge lines end at Chicago. Water competition was the only justification alleged for the fourth-section departure. The inbound rate is the only rate to which this alleged justification can apply, and is the rate published from the "more distant point". Both the Commission and court below have ruled that the rate need not meet Section Four's requirement that "any" charge "from the more distant point" must be "reasonably compensatory for the service performed."[4] The outbound factor of the combination rate goes to the railroad making the outbound haul, which can be wholly (when the corn goes via Chicago) or partly (when the corn goes direct from

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[4] The clause in Section 4 reads as follows:

". . . the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed." (Emphasis supplied.)

In this proceeding the charge "from the more distant point" rather than "to the more distant point" is the one involved since the variations in distance are from various origin stations to the same destination stations.

Kankakee) by a different eastern railroad than the one receiving the non-compensatory inbound rate.

The Commission's application of Section Four violates not only its literal requirement (that "any" charge from the more distant point must be compensatory), but also, and more fundamentally, its purpose to protect water transportation from the cutthroat competition of non-compensatory rail charges. *It is all the more objectionable that the subsidy for the non-compensatory rate should come from the non-competitive rail reshipping rate applicable to ex-barge grain from Chicago.*

The requirement that "any" charge from the more distant point be reasonably compensatory, was introduced by the amendment to Section 4 in the Transportation Act of 1920.[5] The language did not originally appear in the House Bill, but the Senate proposed similar language and the conference committee settled on the language used.[6] In explaining the purpose of the amendment Senator Townsend stated:[7]

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[5] 41 Stat. 480. The sources of "legislative history" (sic) cited by the court below at 209 F. Supp. 748 consisted of three Commission decisions decided before the enactment of this language.

[6] H. Rep. No. 650, p. 63, H. R. Rep., Vol. 1, 66th Cong., 2d Sess. (1919-1920).

[7] The context of the pertinent portion of Senator Townsend's speech is as follows:

> ". . . The system of rate fixing has existed in this country for many, many years. Cities have been builded; the whole country has been established upon these arrangements. Some of them have been wrong. It has been wrong and is so now to fix the longer-haul rate so low that in itself it is not compensatory; that is, it does not yield its proper portion of the expense of operation of the railroad system. Then it stands to reason that the shorter routes paying the higher proportioned rate must have an additional burden placed upon them. That is wrong.

"When the committee had the bill before it I offered an amendment to that provision, which was adopted, which states positively that *no* rate shall be fixed by the Commission which in itself is not compensatory, that is, which does not yield a proper proportion to the expense of operation of the line." (Emphasis supplied)

Clearly the object was to prevent the establishment of *any* non-compensatory rail charge from any water-competitive point.

In the *Transcontinental Cases of 1922*, 74 I.C.C. 48, 70-71 (1922), the Commission, in determining what constitutes a "reasonably compensatory" rate, referred to the purpose of Congress in enacting the amendment, as follows:

"The criterion of a reasonably compensatory rate suggested by the carriers has been indicated above. It is summarized in the formula 'out-of-pocket-expenses-plus-some-profit.'

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[7] (Continued)

"When the committee had the bill before it I offered an amendment to that provision, which was adopted, which states positively that no rate shall be fixed by the Commission which in itself is not compensatory; that is, which does not yield a proper proportion to the expense of the operation of the line. We also provided that purely latent water competition shall not be the basis for the establishment of rates. What I mean by that is this:

"It has been known for a good many years that what are known as Mississippi and Missouri River points have had lower rates than longer [sic] distances on either side, because of the possibility of water competition over the Mississippi and Missouri Rivers. Evidently the object of that was to keep water transportation off both rivers." 59 Cong. Rec., Part I, p. 740, 66th Cong., 2d Sess. (1919).

"Just as we have rejected the two interpretations of 'reasonably compensatory', suggested by the protestants as too narrow, so we are disposed to reject the single criterion suggested by the carriers in the above formula as insufficient, standing alone. It is probably true that this formula was deemed by us as adequate in disposing of fourth-section applications prior to the amendments of the fourth section in the transportation act, 1920, *Fourth Section Violations in the Southeast*, 30 I.C.C., 153. We do not agree with the carriers that the fourth section has not been changed in substance. The amendment has made mandatory what theretofore rested in our sound discretion as to compensation for the service performed to the more distant point, as to circuity, and as to potential water competition. Moreover, in section 500 of the transportation act, 1920, is expressly declared the policy of Congress to foster and preserve in full vigor both rail and water transportation. We think the amendment was the Congress's way of saying that we should follow a less liberal policy in dealing with departures from the long-and-short-haul rule than had been followed in former years. Our administrative power at this time is in some respects narrower than before the amendment. The fourth section, as amended, requires the observance by us of certain administrative rules which we were enforcing prior to the amendment, but which in some measure lay within our sound discretion to modify or change. We are also required now to accord due observance to section 500 of the transportation act, 1920, which indicates the purpose of Congress—

> to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.

Moreover, the requirements of section 15a may not be defeated or jeopardized by the action of particular rail carriers seeking to augment their own net earnings, irrespective of the effect of rate changes adverse to the carriers of the country generally, or of a large territorial group. *Trunk Line and Ex-Lake Iron Ore Rates*, 69 I.C.C. 589. It clearly would defeat the intent of Congress to foster transportation by rail and water in full vigor if the rail carriers were permitted, at practically little or no profit to themselves, to operate so as to deprive water carriers of traffic which the water carriers would naturally handle."

The Commission's discussion in this case has been treated as a landmark since that time. The concern it expresses for the protection of water transportation from the competition of uneconomic rail charges fairly states the contemporaneous understanding of the congressional purpose in enacting these changes in Section 4. Clearly it is not consonant with this purpose to authorize fourth section rail-rate departures created solely by the promulgation of separately-published *non-compensatory* water-competitive rail charges when the only basis urged for authorizing the fourth section departure is the existence of water competition.

This statement of the congressional purpose in the amendments of 1920 equally condemns the failure of the Commission and the court below to take any note of the evidence showing the fact that the applicant railroads actually suffer a net loss of revenue from the departure rates. The barge lines end at Chicago. The applicants carry this corn to the east without regard to whether it comes to Chicago by barge or to Kankakee by rail. The fourth section departure created by the non-compensatory

inbound rail rate gives applicants no more of this traffic than they otherwise would have on the eastern leg of the haul. They continue to have all the traffic, and to receive all the revenue for the movement to the east; their reshipping rates east to these destinations from Chicago and from Kankakee are the same. The only additional revenue realized by applicants from traffic diverted from the barge lines by the fourth section departure, created by the non-compensatory inbound rate, is the non-compensatory inbound rate itself. This Court early recognized that no difference in circumstances could justify rates so low "as to be non-remunerative, and thereby cast an unnecessary burden upon other shippers." *Intermountain Rate Cases*, 234 U.S. 476, 483 (1914). In the *Transcontinental Cases of 1922*, 74 I.C.C. 47, 77-81, the Commission specifically disapproved reduced rates which would not increase traffic sufficiently for the revenue on the increase to offset (a) the loss of revenue on traffic which would be retained in any event, and (b) the added expense of transporting the increased traffic resulting from the departure rate. Since the inbound rate will not meet out-of-pocket expenses of the inbound haul, obviously the loss created by such non-compensatory rate, cannot help but impose a burden on other traffic of applicants. It was error for the Commission to omit making findings as to the effect of the fourth section departure rates on the whole net revenue situation of those railroad applicants. *North Carolina* v. *United States*, 325 U. S. 507 (1945); *Alabama Great Southern Ry.* v. *United States*, 340 U.S. 216 (1950); *Chicago, Milwaukee, St. Paul & Pacific R.R. Co.* v. *Illinois*, 355 U.S. 300 (1958).

SECTION 12 REQUIRED THE COMMISSION TO CONSIDER AND MAKE FINDINGS ON THE EVIDENCE THAT THE RATES VIOLATED THE NATIONAL TRANSPORTATION POLICY, SECTION 1(5), AND SECTION 3(1) and 3(4) OF THE INTERSTATE COMMERCE ACT.

The Commission ignored evidence that in violation of Section 3(1) of the Act the application of the rates was designed to discriminate against Chicago, the major price-making market for corn in the United States. It further made no findings of fact which would justify its refusal to preserve the water carriers' admitted low cost advantage, notwithstanding the National Transportation Policy's mandate that this inherent advantage be preserved and that all sections of the act be enforced so as to give effect to the policy. *Interstate Commerce Commission* v. *Mechling*, 330 U.S. 567 (1947). It refused to consider the reasonableness of the separately-published inbound rate under the provisions of Section 1(5) of the act, even though such a separately-published competitive rate must be compensatory to be just and reasonable as required by Section 1(5). *Chicago & Eastern Illinois R. Co.* v. *United States*, 107 F. Supp. 118 (S.D. Ind., 1952), *aff'm'd*, 344 U.S. 917. It refused to consider evidence of, or to permit further inquiry into, the charge under the fourth section departure rates of 13¢ *less* for corn moving east from Chicago after coming to Chicago by rail on the Kankakee reshipping rate and stopping in transit at Chicago, than is assessed on ex-barge corn moving from Chicago to the same eastern destination, despite the obvious violation of Section 3(4) of the Act. *Arrow Transportation Co.* v. *United States*, 176 F. Supp. 411 (N.D. Ala., 1959), *aff'm'd sub nom. State Corporation Commission of Kansas* v. *Arrow Transportation Co.*, 361 U.S. 353 (1960); *Dixie Carriers* v. *United States, supra, Interstate Commerce Commission* v. *Mechling, supra.*

The reason given for this abandonment of the Commission's long-established duty under Section 12 to enforce all sections of the Act (see *The Tap Line Cases*, 234 U.S. 1, 29 (1914)), was that these plaintiffs and other protestants had complained of these illegalities of the rates in this proceeding without filing complaints under Section 13(1) of the Act on these same points! They had raised these points in protests filed with the Commission in reliance on repeated statements, of the Commission and this Court, that fourth section departure rates should not and would not be authorized if the rates violate other sections of the Act. *Intermountain Rate Cases*, 234 U.S. 476, 486; *City of Spokane* v. *Northern Pacific Ry. Co.*, 21 I.C.C. 400, 426 (1911); *Transcontinental Cases of 1922, supra*, p. 71; *Bituminous Coal to Buffalo, N. Y.*, 219 I.C.C. 554, 560 (1936); *Pig Iron to Butler, Pa.*, 222 I.C.C. 1, 2 (1937); *Iron & Steel to Minnesota*, 231 I.C.C. 425, 428 (1939); *Lumber from the South and Southwest*, 245 I.C.C. 67, 73-74 (1941); *Coal Briquettes in the South*, 289 I.C.C. 341, 376-377 (1953). In the *Intermountain Rate Cases* this Court specifically pointed out that any application for the Commission's authority to depart from the fourth section must be considered "in view of the preference and discrimination clauses of the second and third sections" of the Act. When these protests were filed, authority was clear and consistent.

Furthermore, good practice by the Commission should encourage the determination insofar as possible of all questions relating to these rates in one proceeding rather than requiring proliferation of proceedings on the same rates before an already over-burdened agency. As was said by Commissioner Porter in *Jamestown Chamber of Commerce* v. *Pennsylvania R.R. Co.*, 139 I.C.C. 491, 492-493 (1928):

> "We believe it desirable and in harmony with the more modern rule adopted by the courts of permitting all parties interested in the same subject matter to become parties to the litigation and so far as possible settle the entire controversy in one proceeding, to permit the intervention of parties situated as were the interveners in this case."

The Commission discourages relitigation in its Rule 101 (f), which refuses rehearings "submitted by the same party or parties, and upon substantially the same grounds as a former petition". Since the enactment of the Transportation Act of 1940 (54 Stat. 898), this Court holds that "the Commission must take 'cognizance' of the National Transportation Policy and apply the Act 'as a whole'". *American Trucking Association* v. *U. S.*, 355 U.S. 141, 152 (1957).

The Commission's present novel order requires needless multiplication of proceedings in the interest of a dryly technical formality. Courts have been trying to get free of that, and it has no place in proceedings before an agency charged with administering an act as a whole. It is a departure from prior consistent Commission practice, hitherto correctly regarded by the Commission itself as enjoined upon it by the Act and by the expressions of this Court. It is made ex post facto without prior announcement.

The justification asserted is certain remarks of a district court (made sixteen months after these plaintiffs filed their protests) in *Seatrain Lines, Inc.* v. *United States,* 168 F. Supp. 819 (S.D. N.Y., 1958), a case in which that court nevertheless did strike down the Commission's fourth section order there under consideration. The dictum from that opinion would no doubt have been more carefully considered (and would certainly have

been submitted to review) if it had in any way affected the result. It rested, expressly, on what is a rather obvious misunderstanding of this Court's decision in *United States* v. *Merchants & Manufacturers Traffic Association*, 242 U. S. 178 (1916). That was a case in which plaintiffs did not suggest the illegality of fourth section departure rates, filed no protests and did nothing at all in the fourth section proceeding until it was all over and actually decided, whereupon they sought to reopen the proceeding by petition for rehearing on grounds not raised in the terminated proceeding. This Court denied them permission belatedly to overhaul what had been done, pointing out that since they had *not* raised the illegality of the rates in the fourth section proceeding, they could still raise these questions by complaint under Section 13. The case does not even remotely imply that the Commission can ignore questions of compliance with the Act that are presented to it in timely fashion.

Commission procedures should be, and in this respect at least hitherto have been, designed to come quickly to the substantive legality or illegality of rates that it is asked to authorize rather than to enmesh parties in a procedural formality that changes without prior announcement.

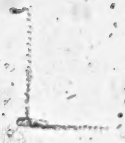
CONCLUSION.

The questions presented by this appeal are substantial and of great public importance. It is respectfully submitted that the Court should note its probable jurisdiction in order that it may be advised by briefs and oral argument on these questions.

Respectfully submitted,

EDWARD B. HAYES,
WILBUR S. LEGG,
Attorneys for Appellants (Plaintiffs Below).

LORD, BISSELL & BROOK,
135 South LaSalle Street,
Chicago 3, Illinois,
346-7475.



APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

A. L. MECHLING BARGE LINES, INC., et al.,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.

No. 61 C 169

Before KILEY, Circuit Judge, and HOFFMAN and AUSTIN, District Judges.

This is a suit by Mechling Barge Lines, Inc., a common carrier, and several grain elevator operators served by barges, to set aside an order of the Interstate Commerce Commission. The order continued in existence a reduced rail rate for corn and corn products transported on the New York Central Belt Line. The Chicago Board of Trade was permitted to intervene as a plaintiff and the New York Central Railroad and several grain elevator operators on its Belt Line were permitted to intervene as defendants.

The Belt Line west of Kankakee, Illinois, roughly parallels the Illinois River on which the barges operate. The barge lines and elevators served by them are in competition with the Belt Line and elevators served by it for the business of transporting corn from northern and central Illinois to destinations on the eastern seaboard. Some farmers sell their corn to elevators for transportation by barge to an east-west railroad and others sell theirs to elevators for transportation by the north-south Belt Line to a connecting east-west railroad or to merchants in Chicago. The transportation rates are of course very important in the competition.

Prior to the published New Kankakee all-rail combination rate, the through one-factor rates for grain and grain products from Streator on the Kankakee Belt Line to New York were 72.5¢ per cwt.; the Chicago combination from stations on the Kankakee Belt Line consisted of a local rate of 23¢ to Chicago, plus the 49.5¢ reshipping rate east, or 72.5¢ per cwt.; the Kankakee combination rate from stations on its Belt Line to Kankakee and reshipping to the east was also composed of the same rate factors. Thus, the through one-factor rates, the Chicago combination and the Kankakee combination, were all equal.

The proposed new Kankakee combination reduced the rate on corn and corn products from stations on the Kankakee Belt Line to 6¢ on corn milled-in-transit for the purpose of meeting the barge competition on the Illinois River, plus a reshipping rate of 49.5¢ beyond Kankakee to the east. The local, or 6¢, rate was to apply only when the product was destined for shipment to eastern destinations. The local, or 6¢, rate was not applicable to whole corn, nor was the rate to Chicago reduced although the Kankakee combination was available to Chicago processors via Kankakee. Application of the new Kankakee combination resulted in a charge less for the longer than for the shorter distance of transportation in that a lower charge from stations west of Kankakee to the east was effected than resulted from Kankakee and intermediate origins to the same destinations.

The New York Central Railroad applied to the Commission for approval, to obviate the violations of 49 U.S.C.A. Section 4[1], of a proposed rate. Plaintiffs and the Board

[1] 49 U.S.C.A. Section 4. Long and short haul charges; competition with water routes.

of Trade protested the application. The Commission granted temporary authority for immediate application of the rate, but ordered a hearing.

The scope of review to be accorded this order is conceded by all litigants to be governed by the Administrative Procedure Act, 5 U.S.C.A., particularly Section 1009(e).[2] Because no dispute exists as to the standards to be applied, this court will allude briefly to the basic concept of such review. In *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125, 140 (1938), the scope of review is stated to be as follows:

> "* * * Only questions affecting constitutional power, statutory authority, and the basic prerequisite of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable. *Interstate Commerce Comm.* v. *Illinois Central R. Co.*, 215 U.S. 452, 470; *Interstate Commerce Comm'n* v. *Union Pacific R. Co.*, 222 U.S. 541."

Plaintiffs claim error in the refusal of the Examiner and the Commission to admit evidence that the proposed rate was discriminatory, unjust and unreasonable, in violation of the Transportation Act;[3] and that the rate failed to preserve the inherent advantage that the National Transportation Policy[4] gives the water carrier. The evi-

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[2] Section 1009(e) provides for the scope of judicial review of agency action to ensure that such action is not unlawfully withheld or unreasonably delayed, or not in accordance with law, procedural or substantive, and that such action is warranted in fact and supported by substantial evidence.

[3] 49 U.S.C.A. Section 15(1).

[4] The declared national transportation policy is to provide, preserve and promote the "fair and impartial regulation of all modes of transportation * * * to recognize and preserve the inherent advantages of each," in order to ensure a national transportation system adequate to meet the needs of commerce and national defense. 49 U.S.C.A. note preceding Section 1.

dence was excluded for the reason that it was not appropriate in this "Fourth Section" proceeding although it would be pertinent upon a complaint under Section 13(1)[5] or a Commission investigation under Section 15(1).[6]

Plaintiffs argue that the Examiner and Commission were bound not to grant the application under Section 4 if to do so involved violation of the other sections noted. We are referred to the Commission's conclusion that granting the application "would not be disharmonious with the other provisions of the Act," to show what the plaintiffs contend is an inconsistency.

We may disregard that conclusion as surplusage and we see no error in the exclusion of the evidence of violation of other sections of the Act. The relief granted is permissive only and the evidence offered was not relevant in this Fourth Section proceeding. *United States* v. *Merchants & M. Traffic Ass'n,* 243 U.S. 178 (1916). Due regard was given to the policy and statutory scheme of the Act within the limits afforded by Section 4 and under that Section the Commission is not required to make specific ultimate findings that a rate is lawful and not discriminatory. The water carrier and other plaintiffs have failed to utilize the provisions of sections of the Act which afford the Commission the proper scope for such determination. *United States* v. *Merchants & M. Traffic Ass'n,* 242 U.S. 178, 188 (1916); *Koppers Co.* v. *United States,* 132 F. Supp., 159, 163 (D.C. Pa., 1955); *Florida Citrus Comm'n* v. *United States,* 144 F. Supp. 517, 526 (D.C. Fla., 1956); *Seatrain Lines* v. *United States,* 168 F. Supp. 819, 825 (D.C.N.Y., 1958).

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[5] 49 U.S.C.A. Section 13(1).
[6] 49 U.S.C.A. Section 15(1).

The Commission found that the "competitive situation which prevailed prior to the proposed rate between the all-rail and barge-rail rates" needed an adjustment under Fourth Section relief. It required a showing that the proposed rates are "reasonably compensatory and no lower than necessary to meet the competition." It found that the evidence that the proposed rate was compensative and set forth the details supporting that finding, and concluded that the New York Central had shown "a special case within the meaning of Section 4[7] of the Act by nature of actual and compelling competition," and that the rate was no lower than necessary to meet that competition, was not destructively competitive and would not impose an undue burden on other traffic.

The question raised upon these findings and conclusions is whether the Commission was correct in considering the entire combination rate within the compensatory test of Section 4, or whether, as the Hearing Examiner did, it should have confined such test to the local rate from Moronts to Kankakee, *i.e.*, the 6¢ rail charge for the trip from the western origins of the Kankakee Belt Line to Kankakee. Admittedly, the only rate competitive to the barge route is the local or proportional rate to Kankakee, there having been no change in the 49.5¢ reshipping rate to the east. However, as the Commission emphasized, the

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[7] Section 4 of the Transportation Act provides:

"* * * That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of . . . property . . . but in exercising the authority conferred upon it by this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence; . . ."

6¢ charge is not collected separately. When shipments originate west of Kankakee they are shipped to Kankakee via the local or flat rate of 23¢ and only when there is a reshipment for corn milled-in-transit to points east of Kankakee will the 6¢ rate be applied. Thus, on reshipment east, there is adjustment made giving recognition to through shipping by reducing the flat or local rate to the 6¢ figure. Consequently, the 6¢ does not exist as a separate charge, but exists only when the combination rate comes into being and a departure from the prohibition of Section 4 occurs when the 49.5¢ reshipping rate is applied. It is clear from the legislative history of this section that Congress was concerned with the long-haul being reasonably compensatory to the carrier and that the Commission so find to grant Section 4 relief. See *Detroit Board of Trade* v. *Grand Trunk Railway*, 2 I.C.C. 199, 202 (1888); *Imperial Coal Co.* v. *Pittsburgh & L.E. R. Co.*, 2 I.C.C. 436, 445 (1889); and *Sheldon Axle & Spring Co.* v. *Lehigh* v. *R.R. Co.*, 53 I.C.C. 43, 44 (1919). The Commission was correct in considering the combination rate and not the single 6¢ proportional.

The final question is whether the report and the findings and conclusions are supported by substantial evidence in the record as a whole. A departure from Section 4 is accorded only in special cases. The record is replete with exhibits and testimony which show that prior to the changed rate almost all free corn, as distinguished from government corn, grown in the geographical area involved was shipped via barge to Chicago and thence by rail to its eastern termini. This obvious disparity of corn shipment was found to exist by the Hearing Examiner and the Commission. 310 I.C.C. 438-441. That a special case exists by virtue of actual and compelling competition has been recognized. *In re Louisville & Nashville R.R. Co.*, 1

I.C.C. 31, 78 (1887); *Intermountain Rate Cases, supra; Skinner & Eddy Corp.* v. *United States,* 249 U.S. 557 (1919); *Nepheline Syenite from Ontario, Canada to the East,* 308 I.C.C. 561, 564-565 (1959).

A reasonably compensatory rate was defined by the Commission in the *Transcontinental Cases of 1922,* 74 I.C.C. 48, 71, as follows:

> "• • • We are of the opinion and find that in the administration of the fourth section the words 'reasonably compensatory' imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; and (4) not jeopardize the appropriate return on the value of carrier property generally, as contemplated in Section 15(a) of the act."

These criteria have received judicial approval. See *Dixie Carriers* v. *United States,* 143 F. Supp. 844 (D.C. Tex., 1956). In the instant case comparative earnings, rate levels and operating costs were submitted to support the compensativeness of the proposed rate. 310 I.C.C. 437, 448-449. This was a proper formula to support the Commission's finding. *Fed. Power Comm'n* v. *Natural Gas Pipeline Co.,* 315 U.S. 575, 586 (1942); *United States* v. *Northern Pacific Ry. Co.,* 288 U.S. 490, 500 (1933); *Youngstown Sheet & Tube Co.* v. *United States,* 295 U.S. 476, 480 (1935); *City of Harrisonburg* v. *Chesapeake & O. Ry. Co.,* 34 F. Supp. 64, 644-645 (D.C. Va., 1940); *Tidewater Associated Oil Co.* v. *A. T. & S. F. Ry. Co.,* 278 I.C.C. 586, 589; *Summer Co.* v. *Erie R. Co.,* 262 I.C.C. 43, 46. In finding that the rate was no lower than necessary, the Commission also examined the bid prices of the two modes of transportation and the effect they had on those country

elevators located between the Illinois River and the Belt. In finding that the rate was not destructive of competition nor unduly burdensome, the Commission had before it evidence of the amount of corn shipped via the two modes of transportation in the periods here in question.

In scrutinizing the evidence upon which the order is premised, the court will not consider the "expediency or wisdom of the order, or whether, on like testimony it would have made a similar ruling,". *Interstate Commerce Comm'n* v. *Union Pacific R. Co.*, 222 U.S. 541, 547, 548 (1911); *Virginian Railway Co.* v. *United States*, 272 U.S. 658, 663 (1926); *United States* v. *Pierce Auto Lines*, 327 U.S. 515, 536 (1945), but will consider only whether in the record as a whole there is substantive evidence to support the order. 5 U.S.C.A. Section 1009(e); *Universal Camera Corp.* v. *Labor Board*, 340 U.S. 474 (1950).

There is no challenge of the detailed facts underlying the findings or conclusions and we find that there is the requisite substantial basis for the findings and conclusions. *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125, 140.

We conclude that the order in question was within the statutory power of the Commission, that it is supported by findings and conclusions based on substantial evidence, and that no prejudicial error occurred in the hearings before the Examiner and Commission. For these reasons we think the complaint should be dismissed. The order of dismissal is being entered this day.

DATE: September 18, 1962.

APPENDIX B.

IN THE UNITED STATES DISTRICT COURT
For The Northern District of Illinois
Eastern Division

A. L. MECHLING BARGE LINES, INC., et al.
v.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al. } 61 C 169

JUDGMENT.

The above entitled cause having come on for final hearing before a duly constituted district court of three judges convened pursuant to Sections 2284 and 2326 of Title 28, United States Code, and the Court having considered the pleadings and the record before the Commission, and the arguments and briefs of counsel, and the Court being fully advised in the premises and having filed its opinion, it is hereby

Ordered, Adjudged and Decreed that the relief prayed for in the complaint be, and it is hereby, denied, and the complaint is dismissed, plaintiff to pay the costs.

Dated this 18th day of September, 1962.

/s/ Roger J. Kiley
Judge, United States Court of Appeals
/s/ Julius J. Hoffman
Judge, United States District Court
/s/ Richard B. Austin
Judge, United States District Court

29098

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION No. 33955

CORN AND CORN PRODUCTS FROM ILLINOIS TO OFFICIAL TERRITORY

Decided June 8, 1960

Authority granted, on conditions, to continue or to establish and maintain on corn products from origins in northern Illinois on that part of the New York Central Railroad's Kankakee Belt Line extending eastward from Moronts to Van's Siding, Ill., both inclusive, to points in central, trunkline, and New England territories, rates composed of a combination of proportional rates to and from Kankakee, Ill., without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act.

Richard J. Murphy, *William C. Leiper*, and *Daniel J. Sweeney* for applicants.

Freeman Bradford, *Leo P. Day*, and *A. C. Schier* for interveners in support of the applicants.

Edward B. Hayes, *Wilbur S. Legg*, *Nuel D. Belnap*, *Harold E. Spencer*, *Richard J. Hardy*, *Richard M. Freeman*, *James V. Springrose*, *Lawrence Farlow*, *James C. Scott*, *I. M. Funk*, *Ronald E. Tallyn*, *E. S. Herron*, *R. D. Erickson*, and *J. S. Chartrand* for protestants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS HUTCHINSON, MCPHERSON, AND HERRING

BY DIVISION 2:

The parties filed exceptions to the report proposed by the examiner, to which replies were made. We have heard the parties in oral argument. Our conclusions differ from those recommended in the proposed report. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By this application, as amended, carriers parties to the New York Central Railroad Company tariff I.C.C. No. 1169 and Agent H. R. Hinsch's tariff I.C.C. Nos. 4403 and 4499, apply for authority to continue or to establish and maintain over their existing direct all-rail routes for the transportation of corn products from origins in northern Illinois on that part of the New York Central's Kankakee Belt Line extending eastward from Moronts to Van's Siding, Ill., both inclusive, to points in central, trunkline, and New England territories, rates composed of a combination of proportional rates

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to and from Kankakee, Ill., as hereinafter described, without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act.

The schedules containing the rates and the application were protested by A. L. Mechling Barge Lines, Inc., hereinafter called Mechling, Cargill, Inc., and the Waterways Freight Bureau, as well as by the Board of Trade of the city of Chicago, the Indiana Board of Trade, two State associations of Illinois elevators, the Illinois Grain Corporation, the Norris Grain Company, and others. The General Foods Corporation, Indianapolis Board of Trade, Evans Milling Company, Illinois Cereal Mills, and several operators of elevators on the Kankakee Belt Line of the New York Central intervened on behalf of the applicants. Suspension was denied, and fourth-section relief was granted temporarily by order No. 18784, entered August 27, 1957, until further order after hearing.

However, on August 28, 1957, certain of the protestants filed an appeal with the United States District Court for the Northern District of Illinois, Eastern Division, to set aside the Commission's temporary fourth-section order and to enjoin the use of the rates without fourth-section relief. A temporary restraining order was issued on that date making the Kankakee combinations inoperative until November 28, 1957, when the court order was vacated and the court action dismissed.

A hearing has been held in the matter of the fourth-section relief sought and several of the respective parties introduced testimony and other evidence according as their interests were affected. In the interest of clarity the rates for which fourth-section relief is herein sought will be referred to as the proposed rates, and those in effect previously as the prior rates. Except as otherwise indicated, all rates and charges are stated in amounts per 100 pounds, include the increase authorized in Ex Parte No. 206, and are subject to the increase authorized in Ex Parte No. 212.

The proposed reduced rates are designed to recapture traffic represented as having been lost to competing barge lines operating by way of Chicago in conjunction with rail lines beyond. The carriers do not desire to reduce existing rates at higher rated intermediate points not affected by the same competitive conditions.

Historically, the rail rates on grain and grain products from northern Illinois, including the considered origins, to eastern destinations were combinations over Chicago, Ill., and later when single-factor rates were established they were made equal to the combinations, the rates on the corn products having been maintained uniformly 0.5 cent higher than the rates on grain. On traffic accorded transit, the local or flat rates were generally observed to the gateway points, for example Chicago or Kankakee, and the

reshipping rates therefrom applied on the outbound movement, observing as minimum the single factor through rate or the flat rate from the gateway, whichever was higher, in conformity with outstanding fourth-section relief.

In an effort to meet the competition of the barge-rail routes, effective December 15, 1956, the New York Central established a proportional rate of 5 cents (subsequently increased to 5.5 and 6 cents, respectively, under Ex Parte Nos. 206 and 212), minimum 100,000 pounds, on corn and corn products from the considered origins to Kankakee over its line direct for application in conjunction with the existing proportional or reshipping rates beyond on traffic milled in transit and finally destined to points in the western termini of eastern trunklines and east thereof. At the same time, the through single-factor rates from these origins to final destination, as well as the flat rate from Kankakee to final destination, previously observed as minimum in connection with the prior rates, were restricted so as not to apply when the combination of the proposed proportional rates to and from Kankakee to final destination is lower. The proposed rates were permitted to become effective at that time without protest and were published in the belief that outstanding relief protected any departures which might occur. However, it was subsequently discovered that by limiting the rates to points at the western termini of eastern trunklines and east thereof, unauthorized departures were created at destinations in central territory. Moreover, by eliminating the application of the single-factor through rates from origin to final destination, as well as the flat rate from Kankakee to final destination as minimum, origin departures were created at Kankakee and points east, north, and south thereof. To eliminate the unauthorized destination departures the same combination of proportionals was established for application on like traffic from the same origins to destinations in central territory effective July 30, 1957, which date was voluntarily postponed until August 29, 1957, and because of the temporary restraining order entered by the court did not become effective until November 28, 1957.

The considered rates, as indicated, are designed to meet the barge-rail combination rates over Chicago, comprising the local barge rates to Chicago and the rail reshipping rates to eastern destinations, which are the same as in effect from Kankakee. The local barge rates from 10 Illinois River ports [1] to Chicago ranged from 3.5 to 6 cents on December 5, 1957, and effective December 6, 1957, 3.65 to 6.25 cents when they were increased slightly. There is no milling-in-transit requirement for the application of the barge-rail combination

[1] Lockport, Joliet, Morris, Seneca, Ottawa, La Salle, Spring Valley, Hennepin, Henry, and Lacon, Ill.

rates. In arriving at the inbound proportional under the proposed rates, the weighted average barge rate of 4.625 cents on the barge movement for the period December 16, 1956, to November 11, 1957, from the 10 ports to Chicago was considered as the competitive rate. On the same movement the weighted average barge rate would be 4.825 cents effective December 6, 1957.

The proposed rates have application only in connection with the reshipping rates on grain products insofar as they apply on certain corn products. In the first instance the corn is moved from its Belt origin to Kankakee or other transit points in official territory under the flat rate. After milling in transit and reshipment of corn products, the inbound charges are readjusted on the basis of the proportional rate on corn to Kankakee and the reshipping rates on grain products from Kankakee, and the credit is applied to the outbound movement of corn products. Charges for the shrinkage and manufacturing loss remain on the basis of the local rate to the transit point.

The Kankakee Belt Line west of Kankakee roughly parallels the Illinois River in northern Illinois. Moronts is on the river about 4 miles from the nearest river port of Spring Valley, Ill., and Van's Siding, which is the most distant point from the river, is about 32 miles south of its nearest port of Joliet, Ill. The northern Illinois territory produces a surplus of corn. At one time, the corn moved over all-rail routes to eastern destinations. However, the development of commerce on the Illinois River about 20 years ago started a diversion of the all-rail movement to barge-rail routes extending from river ports by barge to Chicago, Ill., and thence by rail to eastern destinations. In 1935, 1940, and 1957, respectively, about 1.5, 19, and 59 million bushels of grain, including 0.7, 16, and 34 million bushels of corn, moved by barge from all Illinois River ports to Chicago. The bulk of the corn moved by barge originates at the 10 river ports which range from 4 to 36 highway-miles from the Belt origins, and is drawn from farms ranging up to 40 miles from the ports.

The primary business available to the New York Central at the origin points is grain, predominately corn, traffic. During 1954, 1955, and 1956, respectively, 467, 729, and 615 carloads of grain, including 305, 533, and 464 carloads of corn originated thereat. Most of it was Commodity Credit Corporation corn[3] which is usually shipped by rail for export, and is not subject to the same competitive forces as "free" corn.[4] In 1957, however, for the 6-, 8-, and 12-month periods ended June 30, August 31, and December 31,

[3] Corn under Government control.
[4] Corn available on the open market.

1957, respectively, 1,915, 2,411, and 2,681 carloads of corn were originated at the Belt origins.

The 1956 corn crop in the area was somewhat heavier than the 1955 crop, thus increasing the movement in 1957. During the period December 15, 1956, to August 30, 1957, hereinafter called the competition period, when the proposed rate was in effect the corn movement by barge from the 10 river ports to Chicago amounted to 493,668 tons, including 387,256 tons by protestant A. L. Mechling Lines, Inc.[4] Lockport and Joliet, the river ports nearest Chicago, are not affected by the reduced rate to the same extent as the other ports. From Hennepin, Henry, and Lacon, the three ports south of Morenta, the greater part of Mechling's corn business moved to the south in 1956 and north to Chicago in 1957. From the other five ports affected, Mechling's barge movement to Chicago was lower by 22,928 tons in the competition period than during the corresponding period a year earlier.

Cargill Incorporated, Illinois Grain Corporation, Norris Grain Corporation, W. W. Dewey Company, and Glidden Company, operate subterminal elevators at one or more of the ports. Cargill Incorporated's corn purchases at three elevators from the area south of the river dropped from 1,632,092 bushels in the period December 15, 1955, to August 31, 1956, to 1,171,329 bushels in the competition period. From the same area Illinois Grain Corporation purchased 854,826 and 365,005 bushels during the first 8 months of 1956 and 1957, respectively. Norris Grain Corporation experienced purchase declines in 1957 under 1956 at three elevators. The decline at the one elevator most affected amounted to 646,380 bushels in the first 6 months of 1957 under the first 6 months of 1956. W. W. Dewey Company's purchases from four points on the Belt were reduced from 120,000 bushels in the first 8 months of 1956 to 15,000 bushels in the same period of 1957. Glidden Company's elevators were opened in the fall of 1956. Its limited experience indicates a decline in purchases in the area subsequent to the effectiveness of the proposed rate.

The river subterminal elevators are intermediate between the terminal elevators in Chicago and the country buyers in northern Illinois. They are generally operated by the terminal elevators and were established to accumulate corn for river movement. With the exception of Dewey, which purchases both from country buyers and direct from the farmer, this accumulation is by purchase through the country elevatorman. Originally the country elevators sold to

[4] Includes A. L. Mechling Barge Lines, Inc.'s, wholly owned subsidiary, Marine Transit Company.

buyers for all-rail movement. Their facilities were designed to receive grain from the farmers, assemble it in carload lots, and load it into rail cars, these being the same functions as to rail corn as are performed by the subterminal elevators to barge corn. The advent of river transportation and the establishment of subterminal elevators opened another outlet for the corn. In the years immediately preceding the establishment of the proposed rate, when the corn rates on the Belt were prohibitively high, the country elevators near or at the Belt became, for the most part, buyers or merchandisers of corn for barge movement, and elevated only small quantities of corn for which there were local retail requirements. For his service, the country elevatorman realizes from 1 to 4 cents a bushel depending on whether he actually performs an elevation or merely serves as a merchandiser.

The corn is moved from the farms to the elevators in farmer-owned or for-hire trucks, the cost of which, in either case, is borne by the farmer. Most of the corn sold at the river comes directly from the farm with only a small portion coming from the country elevators. The for-hire truck rates are on a distance scale filed and fixed by the Illinois Commerce Commission. They range from 2 to 4 cents a bushel for distances ranging up to 30 miles.

Bids to the farmers are based on the price at the most advantageous terminal market less the country buyers markup and transportation costs. River bids are f.o.b. trucks at river elevator, while Belt bids are f.o.b. rail cars. At the Belt, the farmer stands the cost of elevation; at the river, he does not. Prior to the proposed rate, the free corn sales of elevators on the Belt were made to the river elevators, because corn for river transportation commanded higher prices than corn for rail transportation. The higher prices were attributed to the ability of the river buyers to market the corn at lower transportation costs over the barge-rail routes than rail buyers over the all-rail routes. Since the effectiveness of the proposed rates, it became more profitable for these Belt elevators to ship by rail, and the farmers benefited by the competitive bidding. Despite their ability to pass on to the farmers the advantage of competitive bids, these Belt elevators assert that the amount of corn handled by them has not increased. There is a difference in their business, however, for rather than performing merely the merchandising service on barge corn, they now perform an actual elevation on rail corn. Several country elevators with rail facilities from 3 to 11 miles from the Belt have established portable loaders on the Belt. The 14 supporting elevators contend that without a competitive rail rate, they would again be relegated to the status of merchandisers for

barge movement and the investments in their elevators and facilities for rail shipment would be virtually destroyed.

Of the opposing country elevators, eight are located between the Illinois River and the Belt, two are south of the Belt, one is north of the river, and one is on the river and is not served by rail. The last-mentioned elevator buys corn from farmers as much as 18 miles south of the river or within 6 miles of the Belt. Although it has not been affected by the proposed rate, it recognizes the possibility of some loss in its south territory. The others, though served by rail lines other than the Belt, sell most of their "free" corn at the river, and consequently have been adversely affected by the proposed rate. Th majority have lost "free" corn business. Most seriously affected was one located at the same point as an elevator served by the Belt. Its business exceeded 250,000 bushels in each of the years 1955 and 1956, but it shipped only 31,000 bushels in 1957[8] and nothing in January 1958. The total decline in "free" corn business of all these country buyers, under 1956, was less than 25 percent. One of them shipped a portion of its 1957 business through an elevator on the Belt at a cost of over half of its usual commission on such sales. Another located midway between the Belt and the river, actually experienced a business increase, 1957 over 1956, with most of its corn going to the river. Its rail shipments declined from 258 carloads in 1956 to 78 carloads in 1957. Another believed that the proposed rate would be a temporary situation, and to retain its farmer customers it absorbed the difference, amounting to $1,800, between bids on corn in rail cars at competitive Belt elevators and bids in cars at its elevator.

The proposed rate has enabled the Belt elevators to outbid the middlemen seeking to purchase corn near the Belt area for river shipment. On January 30, 1958, the prices bid for corn per bushel were $1.09 in car at Missal, Ill., on the Belt, $1.04⅞ in car at Kernan, Ill., on another railroad, about 3 miles north of the Belt, and $1.075 in truck at the river. Since the Belt bid is f.o.b. freight car, an adjustment to eliminate the cost of elevation (averaging 2.5 cents per bushel) would place it 1 cent below the river bid at comparable stages in the transportation chain. There is little evidence that "free" corn moves by rail on other than the Belt line from stations between the Belt and the river. The Kernan bid less the cost of elevation would net the farmer $1.02⅜ in truck at Kernan. The river bid less the 2¾-cent truck rate to the river would net the farmer $1.04¾ in truck at Kernan.

[8] The effectiveness of the proposed rate was enjoined from August 28, 1957, to November 28, 1957.

The Farmers Grain Dealers Association of Illinois and the Illinois Grain Dealer's association, each of which has a membership of approximately 800 country elevators with facilities at about 400 rail stations in Illinois, ask for the restoration of the former competitive position among their members. It is their position that the rate from one station on one railroad must be competitive with the rate from another station on another railroad; that such rail rates should be competitive with other modes of transportation; and that such fourth-section relief as may be necessary should be granted to enable the railroads to compete with Illinois River barge lines.

Opposed to any fourth-section relief is the Indiana Farm Bureau Cooperative Association, a federated cooperative of about 86 associations with a total membership, mostly farmers, of about 160,000. It is a member of both the Board of Trade of the city of Chicago which opposes, and the Indianapolis Board of Trade, Inc., which supports, the applicants. It operates a 5.5 million bushel elevator on the New York Central at Indianapolis, Ind., and a 2.5 million bushel elevator in Louisville, Ky. It handles about 25 million bushels of corn annually, a large part of which is marketed in official territory. Among its 150 to 200 Indiana shipping points are stations intermediate from Kankakee to eastern destinations on the New York Central from which the rates on milled-in-transit corn to those destinations are as much as 10 cents higher than the proposed rates. Combination rates on corn via barge to Chicago thence by rail to these destinations are lower than the local rates from intermediate Indiana destinations and are applicable over Kankakee as well as Chicago. Shifting some of the Belt corn from barge to rail, which is the effect of the proposed rates, would not alter the present competitive relationship at eastern markets between it and Indiana corn.

In its study of the competitive situation, the New York Central made inquiries of corn processors at Kankakee, Paris, and Danville, Ill., and Indianapolis, Ind., as well as country elevators on the Belt. Three of the processors, General Foods Corporation at Kankakee, Illinois Cereal Mills at Paris, and Evans Milling Company at Indianapolis, support the proposed rate. Until the effectiveness of the proposed rate, the corn purchases of General Foods in the northern Illinois territory for rail delivery amounted to about 1.5 carloads a week. After the proposed rate became effective, it received 1,101 carloads during the first 8 months of 1957. In the same period, Illinois Cereal and Evans Milling received 327 and 219 carloads, respectively, from Belt origins. Immediately prior to 1957, Illinois Cereal received only two carloads in 3 years, and Evans Milling did not receive any cars in 15 years, from Belt origins. Of the 1,915 cars of corn originating on the Belt in the first 6 months of 1957,

1,326 cars, reflecting 70 percent of the total, were destined to Kankakee, Indianapolis, Paris, and Danville, and 548 to Chicago. Practically all, if not all, the 1,326 cars consisted of "free" corn on which the proposed rate would apply, while to Chicago, 31 cars were of "free" corn taking the proposed rate, and 517 were Commodity Credit Corporation corn to which the proposed rate would not apply. From the Belt origins to Chicago, the "free" corn movement aggregated 270 carloads in the 12-month period ended October 30, 1956, and 45 cars in the same period a year later.

According to General Foods Corporation, the proposed rate has enabled rail buyers to bid for corn in the country market in competition with river buyers, but a difference in the price which would be offered to the farmer still exists in favor of the river subterminal elevators. It computes differences of 9.28 and 0.63 cents a bushel before and after the effectiveness of the proposed rate, respectively. To determine the prices which could be offered to the farmer at the river elevator at Morris, Ill., and at the country elevator at Blair, Ill., it used a Chicago market price of $1.15 a bushel, from which it subtracted costs of 14.32 cents [6] a bushel on rail originations prior to the proposed rate, leaving $1.0068 a bushel as the amount which could be offered to the farmer at the country elevator; 5.67 cents [7] a bushel on rail originations since the effectiveness of the proposed rate leaving $1.0933 a bushel as the amount which could be offered to the farmer at the country elevator; and 5.04 cents [8] a bushel on river originations leaving $1.0996 a bushel as the amount which could be offered to the farmer at the river elevator.

Based on the actual daily bids at five Belt points and five river points during the 7-month period ended July 31, 1957, the Belt bids averaged 2.02 cents a bushel higher than the river bids. The belt bids, however, were f.o.b. rail car, after elevation; while the river bids were f.o.b. trucks, prior to elevation into barges. By adjusting the bids to a similar basis for comparison, the river bids are seen to be higher on the average than the rail bids.

The record indicates that the use of different moisture discount scales brings about different levels in bids, thus complicating the price picture and making it difficult to determine what the ultimate price paid will be under each scale. General Food's bids were on

[6] Reflects the proportional rail rate from Blair to Chicago of 20.5 cents and 3 percent tax converted to 11.82 cents a bushel plus country elevator handling of 2.5 cents a bushel.

[7] Reflects the proposed rate from Blair to Kankakee of 5.5 cents and 3 percent Federal tax converted to 3.17 cents a bushel, plus country elevator handling of 2.5 cents a bushel.

[8] Reflects the barge rate from Morris to Chicago of 4.4 cents and 3 percent Federal tax converted to 2.54 cents a bushel, plus elevation at river of 1.5 cents a bushel (2.68 cents per 100 pounds) and country elevator markup of 1 cent a bushel.

moisture discounts of 1 cent a bushel for each 0.5 percent of moisture ranging from 15.5 to 23 percent. There is testimony to the effect that three other scales are in use at Chicago and other markets, but there is no evidence that the river and Belt bids actually compared were on different scales so as to require any adjustment.

The cost of trucking from farm to river elevator on barge movements offsets the cost of trucking from farm to Belt elevator on rail movements. It is borne by the farmer in either case. If he were located equidistant from a river elevator and a Belt elevator, he could truck to either at equal cost. The same would hold true for a country elevator operator trucking corn which previously had moved from the farms to his elevator. The protestants contend that it costs more to truck corn from the farm to the river than to the Belt because river elevators are up to 40 miles from the farms and for-hire trucks are usually employed, while country elevators are generally within 6 miles of the farms, and farmer-owned transportation facilities are used. The logic of this contention is elusive. From the midway point the cost of getting the corn to the river or to the Belt would be the same whether the shipper, either the farmer or elevator operator, hired or furnished his transportation. From points north or south of the midway position, shippers would enjoy offsetting geographical advantages as to movement toward the river and the Belt, respectively.

Cargill Incorporated, Illinois Grain Corporation, and Glidden Company compare barge shipper costs of 18.5,[9] 17.7,[10] and 18 cents[11] per 100 pounds, respectively, with the proposed rate of 5.5 cents, and assert that these barge costs make no provision for insurance, shipper preference for country run unmixed corn, and the usual water-carrier disabilities such as weather conditions and added handling. This comparison is not valid in that barge-shipper costs are inflated, at least to the extent that they include cost of trucking to, and elevation at, the river. The more valid comparison is that of the bids, properly adjusted as previously herein described. The bids are predicated on the market price at Chicago, the purchaser's requirements, and

[9] Includes trucking from Missal, Ill., country elevator to Ottawa, Ill., river elevator of 5.36 cents, transfer truck to barge of 2.68 cents, barge rate Ottawa to Chicago of 4.95 cents, stevedoring at Chicago of 1.15 cents, transfer barge to rail at Chicago of 4.01 cents, and outbound inspection of 0.45 cent.

[10] Includes trucking from Dwight, Ill., country elevator to Morris, Ill., river elevator of 5.4 cents, transfer truck to barge of 2.7 cents, barge rate Morris to Chicago of 4.4 cents, and stevedoring and transfer barge to rail at Chicago of 5.2 cents.

[11] Includes nominal trucking from country elevator to Seneca, Ill., river elevator of 2 cents a bushel, transfer truck to barge of 1.5 cents a bushel, barge rate Seneca to Chicago of 2.63 cents a bushel, stevedoring at Chicago of 0.75 cent a bushel, and transfer barge to rail at Chicago of 2.25 cents a bushel, a total of 10.13 cents a bushel or 18 cents per 100 pounds.

the cost of transportation to Chicago from the points where the bid is made.

The Board of Trade of the city of Chicago, though contending that the proposed rate is too low, expresses doubt that an inbound rail proportional of 18 cents based upon the barge movement costs to the shipper as submitted by the river elevators, would enable applicants to meet the barge competition. Since price is a controlling factor in the shipper selection of the transportation mode, it believes that an equitable basis would be one predicated upon the pricing of the corn at the river elevator and on the Belt. Based upon the average difference of 2 cents a bushel in the rail corn bid on the Belt over the barge corn bid at the river and the trucking charges ranging from 2 to 4 cents a bushel from country elevators to river elevators, the proposed inbound proportional, according to the Chicago Board of Trade, would be lower than competitively necessary from Belt points in the 2, 2.5, 3, 3.5, and 4 cents a bushel trucking zones by amounts of 7, 8, 9, 10, and 10.5 cents per 100 pounds, respectively. By subtracting these amounts from the Belt bids, and trucking charges from the river bids, the Belt and river average bids for the 7-month period ended July 31, 1957, would be approximately the same, differing only from 0.02 to 0.2 cents a bushel. Increases, from 7 to 10.5 cents depending upon the trucking zone, would produce inbound proportional rates ranging from 12.5 to 16 cents. The 12.5-cent rate so adjusted would apply from Belt points nearest the river and most affected by barge competition, but most distant to Kankakee, and the 16-cent adjusted rate would apply from points most distant to the river and least affected by the competition, but nearest to Kankakee. Both the simple averages of 46.4 miles and weighted average distance of 38.3 miles based upon the corn movements on the Belt during the first 6 months of 1957, from the Belt points to Kankakee, are in the 3 cents a bushel trucking zone. The adjusted rate from Belt points in that zone would be 14.5 cents, and the Chicago Board of Trade is of the opinion that the Belt points should be blanketed with this rate because the points are so treated now, and the river prices at the most competitive river elevators, Spring Valley to Morris, are blanketed. This elaborate Chicago Board of Trade proposal is defective in that it begins with the erroneous premise that the Belt bids during the comparison period were higher than river bids, when, in fact, they were not, since they applied to corn at different levels in the transportation chain. Moreover, it contemplates a situation in which shippers by barge can favorably compete with shippers by rail at points on the Belt and permits the railroad to enjoy its geographical advantage only as to corn grown south of the Belt.

Applicants submitted no cost data, but rely on comparative earnings, rate levels, and operating conditions as indicative of the compensativeness of the proposed rate.

During the 8-month period ended August 31, 1957, the corn and corn products movement of the General Foods Corporation yielded average revenues of $66.07 per car, 110,076 pounds, and $1.685 per car-mile for 39.21 miles, from Belt origins to Kankakee; $403.33 per car, 81,775 pounds, and 47.7 cents per car-mile for 845.7 miles, from Kankakee to eastern destinations; and $448.42 per car and 50.69 cents per car-mile for 884.7 miles, from Belt origins to eastern destinations. In the same period, the movement of Evans Milling Company yielded average revenues of $59.42 per car, 109,137 pounds, and $2.38 per car-mile for 24.95 miles, from Belt origins to Kankakee; and $407.33 per car, and 61.62 cents per car-mile from Belt origins to eastern destinations, including Ohio via Kankakee and Indianapolis. The proposed rates did not apply to Ohio destinations during the period, and, excluding such shipments, the car-mile earnings averaged 51.09 cents. For 1955, the average revenues of the New York Central were 40.015 cents per car-mile for its average haul of 236.58 miles. Between 1948 and 1956, inclusive, the average railroad revenue from corn ranged from 78 to 95 cents per short line car-mile. On the products of agriculture, earnings ranged from 42 to 48 cents and on selected grain and grain products (including corn and corn products) 57 to 71 cents. Distances on which the study producing these figures was based were not shown. Actual distances would produce lower earnings, but in many instances actual mileages are close to short-line mileages.

The proposed combinations from Belt origins to 18 representative destinations via Kankakee, and the reshipping rates from Chicago to eastern destinations, reflect averages of 14.4 and 13.1 percent, respectively, of the docket 28300 first-class rates. On ex-lake grain, from Buffalo and Oswego, N.Y., and Erie, Pa., to tidewater ports, applicants maintain export proportional rates which range from 6.3 to 9.5 percent of the same first-class rates. Also, from certain Belt origins to New York City and Boston, Mass., applicants maintain export rates on grain which are lower than the combination of proportionals over Kankakee. For example, from Dwight, the combination domestic rates are 59.5 and 61.5 cents to New York City and Boston, respectively, and the export rate is 54.5 cents to both ports.

The operating distance of the New York Central from Chicago to Kankakee is 75 miles compared with the weighted average distance of 38.3 miles from Belt points to Kankakee. The aggregate distances from Belt to Kankakee via truck to the river, thence barge to Chicago, and thence the New York Central to Kankakee exceeded

by 133 to 797 percent the distance from Belt points to Kankakee, and to certain eastern destinations. The distances from Chicago via Kankakee exceeded by 3.73 to 20.61 percent the distances from Belt points via Kankakee. The line of another carrier, the Illinois Central Railroad Company, from Chicago to Kankakee is more direct than that of the New York Central. The proposed rates apply from Belt points to eastern destinations via either Kankakee or Chicago.

The switching of loaded and empty grain cars from and to terminal elevators at Chicago for the transportation of corn to Kankakee, Indianapolis, Paris, and Danville by the New York Central is more complex than its handling of cars at Belt origins for movement to the same destinations. Switching charges absorbed by the New York Central on corn from Chicago to Kankakee during 2 months in 1956 averaged about 2 cents per 100 pounds. Avoidance of this cost item and the shorter weighted average distance from Belt points as compared to the distance from Chicago to Kankakee support the New York Central's contention that handling corn from the Belt points is less expensive than from Chicago. Further support lies in the fact that no additional trains or power units were needed to handle the increased corn traffic from the Belt points, since the regular trains drop off the empties when westbound and pick up the loaded cars when eastbound. The exact extent to which handling is less expensive on the Belt than at Chicago is not shown.

The New York Central, for its haul from Chicago to Kankakee, assesses the local rate, but upon transit it is credited to the Chicago reshipping rate applicable via Kankakee, out of which it was required to absorb switching charges. At the proposed rate, it receives after transit the full amount of the proposed inbound proportional rate of 5.5 cents for its haul from Belt origins to Kankakee, and avoids the Chicago switching absorption. Thus by handling traffic at the proposed rate, its revenues are increased by 7.5 cents per 100 pounds over its previous handling, and its expenses are reduced in accordance with the reduction in miles from the 75 between Chicago and Kankakee to the lesser weighted average distance of 38.3 miles from Belt points to Kankakee.

The protestants submitted a study of the system average costs [12] of the New York Central and the territorial average costs [13] of the eastern district railroads. On the average 55-ton load, the out-of-pocket costs of the New York Central and the eastern district rail-

[12] Based upon an application of cost formula Rail Form A of the Commission's section of cost finding.

[13] From our cost finding section statement No. 1-57 applying Rail Form A to expenses of the eastern district railroads, adjusted to reflect current levels.

roads are 8.56 and 8.57 cents per 100 pounds, respectively, for the weighted average distance of 38.3 miles. On minimum loads of 50 tons and for the simple average distance of 46.4 miles, the out-of-pocket costs range up to 9.66 cents per 100 pounds.

This study is intended to show that the proposed proportional rates to Kankakee are noncompensatory. It fails in this purpose, primarily because it deals only with the inbound proportional. That rate factor has no independent existence, but is an integral part of the rate which applies on the through transportation from Belt origin, through the milling-in-transit point, to delivery of the corn product at its ultimate destination. Moreover, it is only by application of the through combination that the fourth-section departures subject of this proceeding are created.

Applicants point out that, since rates from each origin to each ultimate destination could be filed as single factor rates (and be no more compensatory than under the present publication), condemnation based on finding the inbound proportional only to be noncompensatory would be tantamount to condemnation arising out of the method of publication.

The authorities cited by the protestants in support of their contention that the issue here concerns a separate component of through rates for the future the lawfulness of which may be passed on independently of the other components, are not helpful here. *Great Northern Ry. Co.* v. *Sullivan*, 294 *U.S.* 458, was a section 1 case holding that the through rate must be shown to be unreasonable in order to support a reparation award. *Atchison, T. & S.F. Ry. Co.* v. *United States*, 279 U.S. 768, condemned a railroad's attempt to increase a local rate to a transit point after the traffic was shipped out of that point by another railroad. *Cairo Board of Trade* v. *Cleveland, C., C. & St. L. Ry. Co.*, 46 I.C.C. 343, so far as is pertinent, concerned a grain rail center which was unduly prejudiced by the failure of the railroads to accord it reshipping rates comparable to those enjoyed by competitive rail centers. Somewhat similar thereto is *Atlantic Terra Cotta Co.* v. *Atlanta & W.P.R. Co.*, 151 I.C.C. 45.

For 1956, Mechling's operating ratio was 91.9 percent, and its average fully distributed costs for the transportation of corn from the six most competitive ports to Chicago were 11.4 mills and 87.93 cents per ton or 4.4 cents per 100 pounds. These expenses are about 10 cents less than the New York Central's average fully distributed costs of 14.33 and 13.57 per 100 pounds on 50-ton and 55-ton loads, respectively, for 46.4 miles, computed by protestants. According to Mechling, this difference of approximately 10 cents represents its inherent low cost advantage which must be preserved. The barge carrier is not entitled under the act to have its rates protected from

a competing mode of transportation, where, as in this instance, the railroad's efforts to secure traffic do not amount to a destructive competitive practice.

The Chicago Board of Trade and others raise certain issues, principally discrimination against whole corn by the milling-in-transit limitation; discrimination against Chicago by the proposed-rate combination applying over Kankakee when prior thereto rates to the East were made over Chicago; undue preference to the processors of corn by the limitations in the application of the proposed rate to commodities shipped by these processors; and unreasonable routes on the proposed rate combination by the restrictive routes which apply over Kankakee in movements to eastern destinations. Although the New York Central intends to remove the milling-in-transit limitation, these issues do not directly deal with the fourth-section principles here involved, but are properly matters which may be raised in investigation or complaint proceedings. However, since the proposed rates are effective over Chicago, that point has the same stature as all other corn-processing points in official territory in their application. Moreover, the routes over Kankakee are the same as they were for many years prior to the establishment of the proposed rates, and, while limited in their scope as compared to making the inbound rate break on Chicago, there is no indication of undue damage to Chicago.

It is clear that the competitive situation which prevailed prior to the proposed rate between the all-rail and the barge-rail rates on corn from the northern Illinois territory to the East required an adjustment in the all-rail rates, and that such an adjustment requires fourth-section relief. The proposed rates are intended partly to remedy the situation, and the instant application seeks the relief to cover the departures which occur. Before such relief may be granted, applicants must show that the proposed rates are reasonably compensory and no lower than necessary to meet the competition.

The country elevators in the area were originally set up to do business over all-rail routes, and yet, prior to the proposed rate, the preponderant portion of their business was over barge-rail routes. Except for the handling of Government-controlled corn shipped at export rates (which are lower than those in issue), these elevators were relegated, for the most part, to such operation as was necessary to process corn for retail locally, while the elevator operators took on the function of merchandisers employed at taking the corn off the farmers' hands and marketing it at the river. After the proposed rate went into effect, this pattern was changed. Elevators on the Belt discontinued their merchandising business with the subterminal river elevators and returned to their former role as rail elevators.

Of the elevators closer to the Belt than to the river, but which had no facilities on the New York Central, some set up portable equipment on the Belt, while others experienced reductions and face possible elimination of their business in corn for river shipment. This is to be expected in making the all-rail route competitive with the barge-rail route.

Some diversion of traffic must necessarily result in redeveloping a rail movement of corn from the area contiguous to the rail line, and to that extent the barge movement and the business of those connected therewith will be adversely affected. An example of how the competitive situation was altered is seen in the case of the country elevator at Grand Ridge, Ill., which lost some business from farms located between it and the Belt elevator at Streator, 8 miles to the south, but lost no business from farms lying between it and the river elevator at Ottawa, 8 miles to the north. Another country elevator operator at Marseilles, Ill., north of the river, felt no adverse effects from the operation of the proposed rates, notwithstanding that his area of business extends south of the river to within 6 miles of the Belt. Even though he lost some customers, he gained others. It is interesting to note that though this operator was located on a line of the Chicago, Rock Island and Pacific Railroad Company, he had no facilities for rail loading because, as he related, there is no incentive to ship by rail, the river rate being what it is.

At the same time the 10 competitive river ports, notwithstanding their loss of traffic to the Belt, increased their shipments of corn to Chicago from 402,105 tons in the period December 15, 1955, to August 30, 1956, to 493,668 tons in the corresponding period the following year, during which time the proposed rates were in effect. It is apparent that while corn grown adjacent to the Belt was attracted to the rails, that grown adjacent to the river remained with the barges. Thus, it is evident that the proposed rates are not lower than necessary to meet the barge competition.

The rate and revenue comparisons and cost-saving evidence submitted by the New York Central and its supporters establish the compensativeness of the proposed rates.

We find, upon the record herein, that applicants have shown a special case within the meaning of section 4 of the act, by virtue of actual and compelling competition; that the proposed rates are not lower than necessary to meet that competition, do not constitute a destructive competitive practice, are reasonably compensatory, and will not impose an undue burden on other traffic; and that the relief sought would not be disharmonious with the other provisions of the act, would be in the public interest, and is justified.

A fourth-section order granting the relief sought will be entered.

310 I.C.C.

U.S. GOVERNMENT PRINTING OFFICE: 1960

APPENDIX D.

Fourth Section Order No. 19346

ORDER.

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 8th day of June, A. D. 1960.

CORN AND CORN PRODUCTS, ILLINOIS TO OFFICIAL TERRITORY.

By fourth-section application No. 33955, as amended, carriers parties to the New York Central Railroad Company tariff L. C. C. No. 1169 and Agent H. R. Hinsch's tariff I. C. C. Nos. 4403 and 4499, according as they may participate in the traffic, apply for authority to continue or to establish and maintain the rates hereinafter described without observing the long-and-short-haul provision of Section 4 of the Interstate Commerce Act. A hearing having been held, and full investigation of the matters and things involved in said application having been made, and the division, on the date hereof, having been made and filed a report containing its findings of fact and conclusions thereon, which application and report are hereby referred to and made a part hereof:

It is ordered, That applicants in No. 33955, as amended, be, and they are hereby, authorized to continue or to establish and maintain over their proposed direct routes, for the transportation of corn products, in carloads, as more fully described in the application, from points in Illinois on that part of the New York Central Railroad Company's Kankakee Belt Line extending from Van's Siding to Moronts, both inclusive, to points in central,

trunk-line, and New England territories, rates constructed on the basis described in the application, and to maintain higher rates from and to intermediate points; Provided, That the rates from and to such higher-rated intermediate points shall not be increased except as may be authorized by this Commission nor exceed the lowest combination of rates subject to the Interstate Commerce Act.

It is further ordered, That all other and further relief prayed by fourth-section application No. 33955, as amended, be, and it is hereby, denied.

The Commission does not hereby approve any rates filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the Interstate Commerce Act.

By the Commission, division 2.

Harold D. McCoy,
Secretary.

(Seal)

APPENDIX B.

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION NO. 33955 CORN AND CORN PRODUCTS, ILLINOIS TO OFFICIAL TERRITORY

Decided .....

Authority to establish and maintain an all-rail proportional rate on corn and corn products to Kankakee, Ill., from origins on the line of the New York Central Railroad Company, Moronts to Van's Siding, Ill., inclusive, without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act, denied.

Richard J. Murphy, William C. Leiper, and Daniel J. Sweeney for applicants.

Freeman Bradford and A. C. Shier for interveners in support of the application.

Edward B. Hayes, Wilbur S. Legge, Nael D. Belnap, Harold E. Spencer, Richard J. Hardy, Richard M. Freeman, James V. Springrose, Lawrence Farlow, James C. Scott, I. M. Funk, Ronald E. Tallyn, E. S. Herron, R. D. Erickson, and J. S. Chartrand for protestants.

REPORT PROPOSED BY GEORGE A. DAHAN, HEARING EXAMINER.

By application, as amended, railroads parties to New York Central Railroad Company's tariff I.C.C. No. 1169

and Agent H. R. Hinsch's tariffs I.C.C. Nos. 4403 and 4499, apply for authority to establish and maintain an all-rail proportional rate of 5.5 cents,[1] on corn and corn products, minimum 100,000 pounds, from northern Illinois origins on that part of New York Central's Kankakee Belt Line extending eastward from Moronts to Van's Siding, Ill., to Kankakee, Ill., applicable only on milled-in-transit traffic destined ultimately to points in central, trunk line, and New England territories at present proportional or reshipping rates from Kankakee to final destination, without observing the long-and-short-haul provision of the Interstate Commerce Act.

(Sheet 2)

Effective December 15, 1956, the New York Central established over its line direct a proportional rate of 5 cents (subsequently increased to 5.5 cents under Ex Parte 206), on corn and corn products, minimum 100,000 pounds, from the Kankakee Belt origins to Kankakee, restricted to apply on traffic milled-in-transit destined to points at the western termini of eastern trunk lines and points east thereof. At the same time, the through single-factor rates from these origins to final destination were restricted so as not to apply when the combination of the proportional rate to Kankakee and the reshipping rate from Kankakee to final destination is lower. The proportional rate to Kankakee became effective without protest. It was established in the belief that outstanding fourth section orders in connection with the reshipping rates from Kankakee afforded ample relief to cover departures which occurred. Subsequently, applicants learned that restriction of the rate to destinations at the western termini of eastern trunk lines and east thereof created departures at desti-

[1] Rates are stated in amounts per 100 pounds, include the increase under Ex Parte 206 unless otherwise indicated, and are subject to the increase under Ex Parte 212.

nations in central territory not authorized by the outstanding orders. Additionally, unauthorized origin departures were also created at Kankakee and other origins north, south, and east thereof, because the combination of proportional rates to and from Kankakee resulted in lower per-car charges than those in connection with the application of the flat or local rates from Kankakee and other intermediate origins. To eliminate the unauthorized destination departures, the 5.5-cents proportional rate to Kankakee was extended to apply on the same traffic (Sheet 3).
destined ultimately to points in central territory effective July 30, 1957, postponed to August 29, 1957. And the instant application was filed for authority to maintain the origin departures resulting from the adjustments effective December 15, 1956 and August 29, 1957. On August 27, 1957, the Commission granted the relief sought temporarily pending final determination of the matter herein. On August 28, 1957, certain protestants brought a court action to set aside the temporary order of the Commission and to enjoin the use of the rates without fourth-section relief. A temporary restraining order was issued on August 28, 1957, making the reduced rate combinations over Kankakee inoperative until November 28, 1957, when the court order was vacated and the court action dismissed. The reduced rate has been in effect since November 28, 1957.

Historically, the rail rates on grain and grain products from northern Illinois to eastern destinations were combination rates over Chicago, Ill., and later when single-factor rates were established they were made equal to the combinations. From 1907 to 1921, the rates on grain products ranged from the same to one cent higher than the rates on grain. Since 1921, the rates on grain products have been uniformly .5-cent higher than those on

grain. This differential holds true in respect of the reshipping rates as well as the flat rates. The same reshipping rates apply from both Chicago and Kankakee.

The reduced proportional rate, also herein referred to as the proposed rate, to Kankakee, in connection with the reshipping rates from Kankakee, to eastern destinations, (Sheet 4)
is to meet the competition of the barge-rail combination rates over Chicago made up of the local barge rates to Chicago and the same rail reshipping rates to eastern destinations. The local barge rates from 10 Illinois River ports[2] to Chicago ranged from 3.5 to 6 cents on December 5, 1957, and effective December 6, 1957, they range from 3.65 to 6.25 cents. There is no milling-in-transit requirement for the application of the barge-rail combination rates.

In arriving at the original 5-cent proportional rate the weighted average barge rate of 4.625 cents on the barge movement for the period December 16, 1956 to November 11, 1957, from the 10 ports to Chicago was considered as the competitive rate. On the same movement the weighted average barge rate would be 4.825 cents effective December 6, 1957. Including increases under Ex Parte 212, the proportional or proposed rate is 6 cents. This rate has application only in connection with the reshipping rates on grain products insofar as they apply on certain corn products. In the first instance the flat rates on grain from the Kankakee Belt origins to Kankakee and other transit points in official territory is applied on corn. After milling-in-transit at Kankakee or other transit points and reshipment of corn products, the inbound charges are readjusted on the basis of the propor-

[2] Lockport, Joliet, Morris, Seneca, Ottawa, La Salle, Spring Valley, Hennepin, Henry, and Lacon, Ill.

tional rate on corn to Kankakee and the reshipping rates on grain products from Kankakee and applied to the outbound movement of corn products. The local rates initially charged to Kankakee or other transit points apply on the weight of the shrinkage or manufacturing loss.

(Sheet 5)

The Kankakee Belt Line west of Kankakee roughly parallels, the Illinois River in northern Illinois. Moronts is on the river about 4 miles from the nearest river port of Spring Valley, Ill., and Van's Siding which is the most distant point from the river is about 32 miles south of its nearest port of Joliet, Ill. The northern Illinois territory produces a surplus of corn. Historically, this corn moved over all-rail routes to eastern destinations. The development of commerce on the Illinois River about 20 years ago started a diversion of the all-rail movement to barge-rail routes extending from river ports to Chicago, Ill., by barge, and thence to eastern destinations by rail. In 1935, 1940, and 1957, respectively, about 1.5, 19, and 59 million bushels of grain, including .7, 16, and 34 million bushels of corn, moved by barge from all Illinois River ports to Chicago. The bulk of the corn movement by barge originates at the 10 river ports which range from 4 to 36 highway miles from the Kankakee Belt origins. The source of the corn are farms ranging up to 40 miles from the ports.

The primary business available to the New York Central at the origin points is grain, predominately corn, traffic. During 1954, 1955, and 1956, respectively, 467, 729, and 615 carloads of grain, including 305, 533, and 464 carloads of corn originated at the origin points. Most of this rail movement consisted of Commodity Credit Corporation corn[3] which is usually shipped by rail, and is not subject

[3] Corn under Government control.

to the same competitive forces as "free" corn[4]. For the (Sheet 6)
6-, 8-, and 12-month periods ended June 30, August 31, and December 31, 1957, respectively, 1,915, 2,411, and 2,681 carloads of corn originated at the Kankakee Belt origins.

The 1956 corn crop in the area was somewhat heavier than the 1955 corp. This accounted for a heavier movement in 1957. During the period December 15, 1956 to August 30, 1957, when the reduced rate was in effect the corn movement by barge from the 10 river ports to Chicago amounted to 493,668 tons, including 387,256 tons by protestant A. L. Mechling Lines, Inc.[5] In the corresponding period one year earlier this movement totaled 402,105 tons of which 375,922 tons moved by Mechling. The two ports (Lockport and Joliet) nearest to Chicago are the most distant ports to the Kankakee Belt origins and the barge movement from these ports are not affected by the reduced rate to the same extent as the other ports. Also, from the three ports (Hennepin, Henry and Lacon) south of Moronts the great majority of Mechling's corn business moved to the south in 1956 and to Chicago (north) in 1957. From the five ports primarily affected, Mechling's barge movement to Chicago was lower by 22,928 tons in the period December 15, 1956 to August 28, 1957, than during the corresponding period one year earlier.

Cargill Incorporated, Illinois Grain Corporation, Norris Grain Corporation, W. W. Dewey Company, and Glidden Company, operate sub-terminal elevators at one or more of the ports. Cargill's corn purchases at three elevators from the area south of the river dropped from 1,632,092

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[4] Corn available on the open market.

[5] Includes Mechling's wholly-owned subsidiary, Marine Transit Company.

(Sheet 7)
bushels in the period December 15, 1955 to August 31, 1956, to 1,171,329 bushels in the corresponding period one year later. From the same area Illinois Grain purchased 854,326 and 365,005 bushels during the first 8 months of 1956 and 1957, respectively. Norris experienced purchase declines in 1957 under 1956 at three elevators. The decline at the one elevator most affected amounted to 646,380 bushels in the first 6 months of 1957 under the first 6 months of 1956. Dewey's purchases from four points in the Kankakee Belt were reduced from 120,000 bushels in the first 8 months of 1956 to 15,000 bushels in the same period of 1957. Glidden's elevators were opened in the fall of 1956. Its limited experience indicates a decline in purchases in the area subsequent to the effectiveness of the proposed rate.

The river sub-terminal elevators are intermediate between the terminal elevators in Chicago and the country elevators in northern Illinois. The sub-terminal elevators are generally operated by the terminal elevators and were established for the accumulation of corn for river movement. With the exception of Dewey which operates both a sub-terminal elevator and a country elevator, this accumulation of corn is through purchase from the country elevators rather than from the farmers. Originally the country elevators sold the corn to merchants or brokers for rail delivery to processors. And their facilities were designed to receive grain from farm wagons and trucks, assemble the grain in carload lots, and load it into rail cars. The advent of river transportation and the establishment of sub-terminal elevators brought about another outlet for the corn gathered by the country elevators.
(Sheet 8)
For its service, the country elevator realizes from 1.5 to 4 cents a bushel. There is little, if any, difference in the country elevator's margin in its sales to buyers for barge or rail movement.

The transportation of corn from the farms to the country elevators is performed in the farmer's own trucks. The corn sold to the river sub-terminal elevators is transported in for-hire trucks either directly from the farms or to a somewhat lesser extent from the country elevators. There is a small variation in the for-hire truck charge depending upon whether the movements are directly from the farms or from the country elevators. Such charges are based upon distances and are filed and fixed by the Illinois Commerce Commission. They range from 2 to 4 cents a bushel for distances ranging up to 30 miles from elevator to elevator and up to 20 miles from farm to elevator.

The country elevators in a corn producing area base their bids to the farmers on the price at the most advantageous terminal market less transportation costs. Prior to the proposed rate, all the free corn sales of the three supporting country elevators on the Kankakee Belt were made to the sub-terminal river elevators because corn for river transportation commanded higher prices than corn for rail transportation. The higher prices were attributed to the ability of the river sub-terminal elevators to market the corn at lower transportation costs over the barge-rail routes than rail buyers over the all-rail routes. Since the effectiveness of the proposed rates, it became more profitable for these country elevators to ship by

(Sheet 9)

railroad and the farmers benefited by the competitive bidding. Despite their ability to pass on to the farmers the advantage of competitive bids, these country elevators assert that the amount of their business has not increased. Several country elevators with rail facilities from 3 to 11 miles from the Belt have established portable loaders on the Belt.

Of the 11 opposing country elevators, eight are located between the Illinois River and the Kankakee Belt, two are south of the Belt, and one north of the river. The last is on the river and it not served by rail. Although it purchases corn from farmers located as much as 18 miles south of the river or within six miles of the Belt, its business has not been affected by the proposed rate, but its customers south of the river have "been looking toward that rate (proposed rate) pretty strong." The 10 other country elevators are served by rail lines other than the Belt, and have been adversely affected by the proposed rate. The majority have lost business. Most seriously affected was one located at the same point as an elevator served by the Belt. Its business exceeded 252,000 bushels in each of the years 1955 and 1956, but shipped only 31,000 bushels in 1957* and nothing in January 1958. In addition to a decline in business, 1957 under 1956, one of these elevators shipped a portion of its 1957 business through an elevator on the Belt at a cost of over half its commission on such sales. While the total business of one elevator increased 1957 over 1956, its rail shipments declined from 258 carloads in 1956 to 78 carloads in 1957, (Sheet 10)
representing a reduction in rail shipments of about 324,000 bushels. And one elevator believed that the proposed rate would be a temporary situation, and to retain its farmer customers it absorbed the difference, amounting to $1,800, between bids on corn in rail cars at competitive Belt elevators and bids in cars at its elevator.

The proposed rate has enabled the Belt elevators to outbid by as much as 4 cents a bushel other elevators in the same area, thus disturbing the prior equitable competitive relationship among the country elevators. On

*The effectiveness of the proposed rate was enjoined from August 28, 1957 to November 28, 1957.

January 30, 1958, the prices bid for corn per bushel were $1.09 in car as Missal, Ill., on the Belt, $1.04⅞ in car at Kernan, Ill., on another railroad, and $1.075 in truck at the river. One Belt elevator has advertised in the local papers of certain points served by other railroads that it has lower freight rates and calls upon the corn producers to see it for a better price. The opposing country elevators are apprehensive of further inroad of their business as their farmer customers became aware of the higher prices for corn in car on the Belt.

The Farmers Grain Dealers Association of Illinois and the Illinois Grain Dealer's Association, each of which has a membership of approximately 300 country elevators with facilities at about 400 rail stations in Illinois, ask for the restoration of the fair competitive position among their members. It is their position that the rate from one station on one railroad must be competitive with the rate from another station on another railroad; that such rail rates should be competitive with other modes of transportation; and that such fourth-section relief as may be

(Sheet 11)

necessary should be granted to enable the railroads to compete with the Illinois River barge lines.

Opposed to any fourth-section relief, is the Indiana Farm Bureau Cooperative Association, a federated cooperative of about 86 associations with a total membership, mostly farmers, of about 160,000. This association is a member of both the Board of Trade of the City of Chicago and the Indianapolis Board of Trade, Inc., and operates a 5.5 million bushel elevator located on the New York Central at Indianapolis, Ind., and a 2.5 million bushel elevator in Louisville, Ky. It handles about 50 million bushels of grain annually, about half of which is corn, including a large part which is marketed in official territory. Among the 150 to 200 Indiana shipping points

of its member producers are stations on the New York Central from which the rates on milled-in-transit corn to eastern destinations are as much as 10 cents higher than the combination of the proposed rate and the reshipping rates. Since the eastern market price is the same to both the Indiana and Illinois producers, its members must absorb the difference in transportation costs despite the fact that they are less distant and intermediate to the markets, from the Kankakee Belt. This association has not been too concerned about the barge-rail combination rates.

In its study of the competitive situation, the New York Central made inquiries of corn processors at Kankakee, Paris, and Danville, Ill., and Indianapolis, Ind., as well as country elevators on the Belt. Three of the processors, General Foods Corporation at Kankakee, Illinois Cereal Mills at Paris, and Evans Milling Company at Indian-

(Sheet 12)

apolis, support the proposed rate. Until the effectiveness of the proposed rate the corn purchases of General Foods in the northern Illinois territory for rail delivery amounted to about 1.5 carloads a week. After the proposed rate became effective, it received 1,101 carloads during the first 8 months of 1957. In the same period, Illinois Cereal and Evans Milling received 327 and 219 carloads, respectively, from Belt origins. Immediately prior to 1957, Illinois Cereal received only two carloads in 3 years, and Evans Milling did not receive any cars in 15 years, from Belt origins. Of the 1,915 cars of corn which originated in the Belt during the first 6 months of 1957, 1,326 cars, reflecting 70 percent of the total, were destined to Kankakee, Indianapolis, Paris, and Danville, and 548 cars were destined to Chicago. Practically all, if not all, the 1,326 cars consisted of free corn on which the proposed rate would apply, whereas only 31 of the 548 cars to Chicago

were free corn. The remainder, 517 cars, to Chicago were Commodity Credit Corporation corn on which the proposed rate would have no application. From the Belt origins to Chicago, the free corn movement aggregated 270 carloads in the 12-month period ended October 30, 1956, and 45 cars in the same period a year later.

According to General Foods, the proposed rate has enabled rail buyers to bid for corn in the country market in competition with river buyers, but a difference in the price to the farmer still exists in favor of the river sub-terminal elevators It computes differences of 9.28 and .63 cents a bushel before and after the effectiveness of the proposed rate, respectively. To determine the prices to the farmer at the river elevator at Morris, Ill., (Sheet 13)
and at the country elevator at Blair, Ill., it used a Chicago market price of $1.15 a bushel, from which it subtracted costs of 14.32 cents[7] a bushel on rail originations prior to the proposed rate leaving a price to the farmer at the country elevator of $1.0068 a bushel; 5.67 cents[8] a bushel on rail originations since the effectiveness of the proposed rate leaving a price to the farmer at the country elevator of $1.0933 a bushel; and 5.04 cents[9] a bushel on river

[7] Reflects the proportional rail rate from Blair to Chicago of 20.5 cents and 3 percent tax converted to 11.82 cents a bushel plus country elevator handling of 2.5 cents a bushel.

[8] Reflects the proposed rate from Blair to Kankakee of 5.5 cents and 3 percent federal tax converted to 3.17 cents a bushel, plus country elevator handling of 2.5 cents a bushel.

[9] Reflects the barge rate from Morris to Chicago of 4.4 cents and 3 percent federal tax converted to 2.54 cents a bushel, plus elevation at river of 1.5 cents a bushel (2.68 cents per 100 pounds) and country elevator mark-up of 1 cent a bushel.

originations leaving a price to the farmer at the river elevator of $1.0996 a bushel. The different of .63 cents in favor of barge bids does not appear to be representative. A bid as little as .5-cent higher would succeed. It is doubtful that the Belt elevators would shift their sales from river buyers to General Foods when the bid at the river is .63 higher Based on the actual daily bids at five Belt points, and five river points during the 7-month period ended July 31, 1957, the Belt bids averaged 2.02 cents a bushel higher than the river bids. Although the record indicates that differences in moisture discount scales are reflected by different levels in bids so that (Sheet 14)
the actual price of corn would be about equal, and that the bids of General Foods and those of the Chicago market were on moisture discounts of 1 and 1.5 cents a bushel, respectively, for each .5 percent of moisture from 15.5 to 23 percent, there is no evidence that the compared actual bids at the river and at the Belt were at different scales so as to require an adjustment in the determination of a difference between such bids. If the actual bids were on such different discount scales, then the difference would favor the Belt by an additional 3 to 4.5 cents a bushel.

(Sheet 15)

General Foods, as well as the New York Central, would offset the costs of trucking from farm or country elevator to the river elevator on barge movements with trucking from farm to country elevators on rail movements on the grounds that since the farmer bears the trucking costs from farm to either the river sub-terminal elevator or the Belt country elevator, the same expense would be incurred in movements from the farm to equi-distant river elevators and country elevators. But this ignores the movement from country elevator to river elevator of corn which previously moved from farm to country elevator, the relative location of the river elevator which

ranges up to 40 miles from the farms and the country elevator which is generally within 6 miles of the farms, the use of for-hire trucks in farm to river elevator movement as contrasted with farmer wagon or truck carriage in farm to country elevator movement, and applicants propose to place shippers on the Belt in a position to compete with the barge lines. The truck charge from the shipper location to the river is a factor which must be considered. At the same time the trucking directly from farm to river elevator of the major part of the river movements avoids certain private carriage which is of some expense to the farmer and should not be completely ignored.

(Sheet 16)

Cargill, Illinois Grain, and Glidden, compares barge shipper costs of 18.5,[10] 17.7,[11] and 18 cents[12] per 100 pounds, respectively with the proposed rate of 5.5 cents, and point out that these barge costs make no provision for insurance, shipper preference for country run unmixed corn, and the usual water carrier disabilities, such as

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[10] Includes trucking from Missal, Ill., country elevator to Ottawa, Ill., river elevator of 5.36 cents, transfer truck to barge of 2.68 cents, barge rate Ottawa to Chicago of 4.95 cents, stevedoring at Chicago of 1.15 cents, transfer barge to rail at Chicago of 4.01 cents, and outbound inspection of .45 cents.

[11] Includes trucking from Dwight, Ill., country elevator to Morris, Ill., river elevator of 5.4 cents, transfer truck to barge of 2.7 cents, barge rate Morris to Chicago of 4.4 cents, and stevedoring and transfer barge to rail at Chicago of 5.2 cents.

[12] Includes nominal trucking from country elevator to Seneca, Ill., river elevator of 3 cents a bushel, transfer truck to barge of 1.5 cents a bushel, barge rate Seneca to Chicago of 2.63 cents a bushel, stevedoring at Chicago of .75 cents a bushel, and transfer barge to rail at Chicago of 2.25 cents a bushel, a total of 10.13 cents a bushel of 18 cents per 100 pounds.

dependency on weather and added handling. Since the proposed rate applies in connection with the reshipping rates to the east, the barge costs must include all items necessary to place barge and rail shipments in the same position. In purchases of corn from the country elevator, the river sub-terminal elevator does not know whether shipment, in whole or in part, will be made from the country elevator or directly from the farm. Its bid to the country elevator is predicated upon shipment from the country elevator. In the circumstances, these river elevators include the trucking expenses from country elevator to river elevator in their comparisons. They exclude expenses for trucking from farm to country elevator, country elevator margin for its service, and in-

(Sheet 17)

bound inspection, which are the same in both barge and rail shipments. In respect of the country elevator margin, their view coincides with the evidence of the country elevators as contrasted with the comparison of General Foods which appears to understate the country elevator mark-up on barge shipments. To place a barge shipment in the same position as a rail shipment at the proposed rate, the shipper incurs expenses for the services of elevation or transfer from truck to barge and from barge to rail, trimming or stevedoring, and outbound inspection, which services are not required in rail shipment. A so-called trimming in the loading of a rail car is a part of the usual loading operation and entirely different than the trimming or stevedoring a barge. Nor may the fact that Evans Milling purchased about 25 percent of its corn from an Indianapolis terminal elevator, thus requiring an intermediate elevation, be considered as comparable to the elevation or transfer from barge to rail which is necessary on all barge corn to Chicago.

The Board of Trade of the City of Chicago is of the opinion that the proposed rate is too low, and it seriously doubts that a rate of 18 cents based upon barge movement costs to the shipper submitted by the river elevators, would enable applicants to meet the barge competition. Its knowledge of the respective barge and rail services costs to the shipper is limited. But since the price is a controlling factor in the shipper selection of the transportation mode, it believes that an equitable basis would be one predicated upon the pricing of the corn at the river elevator and on the Belt. Based upon the average (Sheet 18)
difference of 2 cents a bushel in the rail corn bid on the Belt over the barge corn bid at the river and the trucking charges ranging from 2 to 4 cents a bushel from country elevators to river elevators, the proposed rate, according to the Chicago Board of Trade, would be lower than necessary to meet barge competition by amounts of 7, 8, 9, 10, and 10.5 cents per 100 pounds from Belt points in the 2, 2.5, 3, 3.5, and 4 cents a bushel trucking zones, respectively. The Belt and river average bids for the 7-month period ended July 31, 1957, would be approximately the same, differing only from .02 to .2 cents a bushel, by subtracting the amounts believed necessary to meet barge competition from the Belt bids and the trucking charges from the river bids. The proposed rate adjusted by increases, from 7 to 10.5 cents depending upon the trucking zone would produce rates ranging from 12.5 to 16 cents; the 12.5-cent adjusted rate would apply from Belt points nearest the river and most affected by barge competition, but most distant to Kankakee, and the 16-cent adjusted rate would apply from points most distant to the river and least affected by the competition, but nearest to Kankakee. Both the simple average of 46.4 miles and weighted average distance of 38.3 miles

based upon the corn movement on the Belt during the first 6 months of 1957, from the Belt points to Kankakee, are in the 3 cents a bushel trucking zone. The adjusted rate from Belt points in that zone is 14.5 cents, and the Chicago Board of Trade is of the opinion that the Belt points should be blanketed with this rate because the points are so treated now, and the river prices at the (Sheet 19)
most competitive river elevators, Spring Valley to Morris, are blanketed.

Applicants submitted no cost data, and the New York Central relies on certain comparative earnings, rate levels, and operating conditions as indicative of the compensativeness of the proposed rate. Based upon the minimum weight and the weighted average distance of 38.3 miles, the proposed rate would yield $55 per car, $1.436 per car-mile, and 2817 mills per ton-mile. These earnings are compared with earnings of $60 per car, $1.017 per car-mile, and 20.3 mills per ton-mile which would be produced by a rail rate on corn, minimum 100,000 pounds, from Winsted, Minn., to Port Cargill, Minn., 59 miles. The compared rate, however, is an intrastate rate scheduled to expire on December 5, 1958, and the local interstate rate is higher.

During the 8 months period ended August 31, 1957, the corn and corn products movement of General Foods yielded average revenues of $66.07 per car, 110,076 pounds; and $1.685 per car-mile for 39.21 miles, from Belt origins to Kankakee; $403.33 per car, 81,775 pounds, and 47.7 cents per car-mile for 845.7 miles, from Kankakee to eastern destinations; and $448.42 per car and 50.69 cents per car-mile for 884.7 miles, from Belt origins to eastern destinations. In the same period the movement of Evans Milling yielded average revenues of $59.42 per car, 109,137 pounds, and $2.38 per car-mile for 24.95 miles,

from Belt origins to Kankakee; and $407.38 per car, and 61.62 cents per car-mile from Belt origins to eastern destinations, including Ohio, via Kankakee and Indianapolis. The proposed rates in connection with the re- (Sheet 20)
shipping rates did not apply to Ohio destinations during the period, and excluding such shipments, the car-mile earnings averaged 51.09 cents. For 1955, the average revenues of the New York Central were 40.015 cents per car-mile for its average haul of 236.58 miles. In 1956, the average railroad revenue from corn was 95 cents per short-line car-mile. Actual distances would produce lower earnings, but in many instances actual mileages are very close to short-line mileages.

The combination of the proposed rate and the reshipping rates from Belt origins to eastern destinations via Kankakee, and the same reshipping rates from Chicago to eastern destinations, reflect averages of 14.4 and 13.1 percent, respectively, of the Docket 28300 first-class. On ex-lake grain, from Buffalo and Oswego, N. Y., and Erie, Pa., to tidewater ports, applicants maintain export proportional rates which range from 6.3 to 9.5 percent of the Docket 28300 first-class. Also, from certain Belt origins to New York City and Boston, Mass., applicants maintain export rates on grain which are lower than the combination of proportionals over Kankakee. For example, from Dwight, the combination rates are 59.5 and 61.5 cents to New York City and Boston, respectively, and the export rate is 54.5 cents to both ports. The proposed rate at issue however is a short-haul gathering rate on domestic traffic.

The operating distance of the New York Central from Chicago to Kankakee is 75 miles compared with the weighted average distance of 38.3 miles from Belt points to Kankakee. The aggregate distances from Belt points

to Kankakee, via truck to the river, thence barge to
(Sheet 21)
Chicago, and thence the New York Central to Kankakee exceeded by 133 to 797 percent the distance from Belt points to Kankakee, and to certain eastern destinations. The distances from Chicago via Kankakee exceed by 3.73 to 20.61 percent the distances from Belt points, via Kankakee. The line of another applicant, Illinois Central Railroad, from Chicago to Kankakee is more direct than that of the New York Central, and the combination of the proposed rate and reshipping rates applied from Belt points to eastern destinations via Kankakee and Chicago.

The switching of loaded and empty grain cars from and to terminal elevators at Chicago for the transportation of corn to Kankakee, Indianapolis, Paris, and Danville by the New York Central is somewhat more complex than its handling of cars at Belt origins for movement to the same destinations. The more complex handling forms the primary basis for the opinion of the New York Central's operating witness that the handling of corn from Belt origins is less expensive than from Chicago. This witness, however, has never made a cost study, and could give no idea as to the extent one handling is more expensive than the other. In addition, no consideration was given to service factors, such as expense of freight agents at Belt origins which is chargeable solely to grain traffic, since grain is the only movement at most of the points.

The New York Central assumes that prior to the proposed rate corn grown on farms adjacent to its lines was trucked to the river, barged to Chicago at which it was purchased by General Foods and shipped over its lines to Kankakee where it was transitted and the product

(Sheet 22)
shipped to eastern destinations over its lines. For its haul from Chicago to Kankakee the billing rate was assessed which upon transit was credited to the Chicago reshipping rate which applies via Kankakee. And it was required to absorb switching charges averaging 2 cents per 100 pounds at Chicago on corn it transported to Kankakee, Indianapolis, Paris and Danville. At the proposed rate, it receives after transit the amount of the proposed rate, 5.5 cents, for its haul from Belt origins to Kankakee, and avoids the Chicago switching absorption. It asserts that it is benefited in the amount of 7.5 cents per 100 pounds by handling traffic at the proposed rate over its previous handling. The average switching absorption is based upon 312 carloads of corn from Chicago terminal elevators on connecting rail lines to General Foods at Kankakee during April, May and June 1956. A substantial portion of this switching was performed by railroads in which the New York Central has a proprietary interest. Although the New York Central representative testified that the "majority" of the corn from Chicago to Kankakee was backed by ex-barge billing "because I have looked at those bills," he was unable to further detail the extent of the Chicago to Kankakee movement backed by ex-barge billing. The policy of General Foods is to buy corn with ex-rail billing behind it, if possible, and it purchases Chicago elevator corn only when it cannot meet its requirements with country-run corn. In 1956, Cargill sold General Foods 410,000 bushels of corn from its Chicago elevator and 295,000 bushels off the rail track at Chicago. All this corn has ex-rail billing behind it.

(Sheet 23)
The protestants submitted a study of the system average costs[12] of the New York Central and the territorial

[12] Based upon the application of cost formula Rail Form A of the Commission's Section of Cost Finding.

average costs[14] of the eastern district railroads. On the average 55-ton load, the out-of-pocket costs of the New York Central and the eastern district railroads are 8.56 and 8.57 cents per 100 pounds, respectively, for the weighted average distance of 38.3 miles. On minimum loads of 50-tons and for the simple average distance of 46.4 miles, the out-of-pocket costs range up to 9.66 cents per 100 pounds. These average costs are refined to reflect identifiable service characteristics of the traffic, viz: Type of car; net weight of load; way train gross ton-mile costs; length of haul; empty return; and a part of the spiral service costs.

The average costs are susceptible to greater refinement, but this is solely within the competence of the New York Central, and there is indication of record that the average costs tend to understate the costs of handling corn traffic on the Belt. On brief, the New York Central contends that the method of applying the cost formula results in a gross overstatement of its costs. To support its contention it readjusts the terminal switching and freight train car costs and arrives at an out-of pocket costs of 6.9 cents per 100 pounds on 55-ton loads for 38.3 miles. The readjusted terminal switching costs are related to the size of the Belt points based upon Statement 4-54 of the Commission's Cost Finding Section, (Sheet 24)
and the readjusted freight-train car costs reflect an origin operation of one car day. But Statement 4-54 is not of record, and there is evidence from recent cost studies of the eastern railroads that the cost of handling of grain in the territory is somewhat higher than the territorial average. Even if the readjustment was valid and

[14] From Section of Cost Finding Section Statement No. 1-57 which is based upon the application of Rail Form A to expenses of eastern district railroads as a group, and adjusted to reflect current levels.

accepted, the proposed rate would still be somewhat less than the readjusted costs.

For 1956, Mechling's operating ratio was 91.9 percent, and its average fully distributed costs for the transportation of corn from the six most competitive ports to Chicago was 11.4 mills and 87.93 cents per ton or 4.4 cents per 100 pounds. These expenses are about 10 cents less than the New York Central's average fully distributed costs of 14.33 and 13.57 per 100 pounds on 50-ton and 55-ton loads, respectively, for 46.4 miles, computed by protestants. According to Mechling this difference of approximately 10 cents represents its inherent low cost advantage which must be preserved.

The Chicago Board of Trade raises certain issues, principally discrimination against whole corn by the milling-in-transit limitation; discrimination against Chicago by the proposed-rate combination applying over Kankakee when prior thereto rate to the East were made over Chicago; undue preference to the processors of corn by the limitations in the application of the proposed rate to commodities shipped by these processors; and unreasonable routes on the proposed rate combination by the restrictive routes which apply over Kankakee in

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movements to eastern destinations. Although the New York Central intends to remove the milling-in-transit limitation, these issues do not directly deal with the fourth-section principles here involved, but are properly matters which may be raised in investigation or complaint proceedings. And in view of the conclusions herein, they need not be further considered.

It is clear that the competitive situation which prevailed prior to the proposed rate between the all-rail and the barge-rail rates on corn from the northern Illinois territory to the East required an adjustment in the all-

rail rates, and that such an adjustment requires fourth-section relief. The proposed rate is purportedly aimed to partly remedy the situation, and the instant application seeks the relief to cover the departures which occur. Before such relief may be granted, applicants must show that the proposed rate is reasonably compensatory and no lower than necessary to meet the competition. That they have not done so is crystal clear.

The Indiana Farm Bureau Cooperative has not been concerned with the barge-rail combination rates, and it is reasonable to assume that its attitude toward the proposed-rate combinations would have been the same if those combinations were no lower than the barge-rail combinations. Although the country elevators in the area were originally set up to do business over all-rail routes and prior to the proposed rate the preponderant portion of their business was over barge-rail routes, there existed an equality of competitive opportunity between these

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elevators. The proposed rate disrupted this competitive equality. After the proposed rate, the Belt elevators discontinued their business with the sub-terminal river elevators and the competitive country elevators incurred substantial losses in, and face an elimination of, their business. This, despite the limitations in the application of the proposed-rate combinations. I do not believe that the business changes would have been so drastic if the proposed-rate combinations were no lower than the barge-rail rate combinations. The river elevators would not have been eliminated from doing business with the Belt elevators, and the competitive country elevators would have been better able to hold on to their farmer customers with little if any, injury to their business with the river elevators. The placing of the all-rail routes on a competitive level with the barge-rail routes would necessarily result in some diversion of traffic, but measured from the extent of the diversion at the proposed rate, it appears

that an extension of the proposed basis without a milling-in-transit limitation and with the combination made over Chicago would completely eliminate barge competition. In the final analysis, the higher rail bids for corn and the higher barge shipper costs since the effectiveness of the proposed rate are clear indications that the proposed rate is lower than necessary to meet the barge competition.

The revenue comparisons and cost saving evidence submitted by the New York Central and its supporters are insufficient to establish the compensativeness of the pro-
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posed rate. This is particularly true in the light of the cost evidence presented by protestants. Although the New York Central contends that the reduced proportional rate is compensatory in of itself and presented some evidence in that respect, it and its supporters take the position that the real issue is whether the combination of the reduced proportional rate and the reshipping rates are compensatory. To support their position they cite, principally, Lane Company, Inc. v. Louisville & Nashville Railroad Co., et al., 292 I.C.C. 76; Board of Railroad Commissioners v. Atchison, T. & S. F. Ry. Co., 34 I.C.C. 111, and Great Northern Ry. Co. v. Commodity Credit Corporation, 77 Fed. Sup. 780. But these cases are not in point. The first deals with a matter of reparation in which case the through charge must be considered. The second holds that all factors of the through rate must be considered to determine whether fourth-section relief is required. It is appropriate here only insofar as the departures are in connection with both proportional factors, there being no departures in connection with the reduced proportional rate from Moronts to Kankakee. And the third case defines a proportional rate. Here the issue concerns a separate component of through rates for the future; the lawfulness of which may be passed on

independently of the other components. Great Northern Ry. v. Sullivan, 294 I.C.C. 458; Atchison, T. & S. F. Ry. Co. v. United States, 279 U.S. 768; Cairo Board of Trade v. Cleveland, C. C. & St. L. Ry. Co., 46 I.C.C. 343; Atlantic Terra Cotta Co. v. Atlanta & W. P. R. Co., 151 I.C.C. 45. (Sheet 28)

In the absence of specific costs, the average costs, with understatements, as well as possible overstatements considered, are of sufficient probative value to determine the compensativeness of the proposed rate. The conclusion that the proposed rate will not meet the bare out-of-pocket costs is inescapable.

The Chicago Board of Trade, Farmers Grain Dealers Association, Illinois Grain Dealers Association, and certain opposing country elevators are of the opinion that a rate of 14.5 cents based upon the corn pricing situation would be reasonable. Cargill, Illinois Grain, and Indiana Farm Bureau Cooperative express the view that a rate not less than 15 cents measured by the transportation costs to the shipper, by the corn pricing situation, and by past barge and Belt rate relationships (the barge rate was from 8 to 10 cents lower than the Belt rate in 1970) can be expected to move substantial quantities of corn on the Belt. Mechling and several opposing elevators suggest as an alternative rate level for the proposed rate a rate no lower than 15.5 cents if the barge and rail modes of transportation are to remain equally competitive and the inherent low cost advantage of water transportation is to be preserved. There is merit to each of these proposals, but there are other issues raised by the Chicago Board of Trade which are not here determined which applicants should consider in any future proposal. Accordingly, the matter of a future proposal will be left to applicants.

The examiner finds that sufficient justification for the relief prayed has not been presented. The application should be denied.

APPENDIX F.

The National Transportation Policy, 49 U.S.C. Note preceding Section 1.

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title], so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title] shall be administered and enforced with a view to carrying out the above declaration of policy."

49 U.S.C. Sec. 1(5); 63 Stat. 485.

§ 1, par. (5). All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection there-

with, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

49 U.S.C. Sec. 3(1); 54 Stat. 902.

§ 3, par. (1). It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: Provided, however, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

49 U.S.C. Sec. 3(4); 54 Stat. 902.

§ 3, par. (4). All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the

connecting line of any carrier subject to the provisions of this chapter or any common carrier by water subject to chapter 12 of this title.

49 U.S.C. Sec. 4(1); 71 Stat. 292

§ 4, par. (1) It shall be unlawful for any common carrier subject to this chapter or chapter 12 of this title to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter or chapter 12 of this title, but this shall not be construed as authorizing any common carrier within the terms of this chapter or chapter 12 of this title to charge or receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: Provided further, That any such carrier or carriers operating over a cir-

cuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this chapter or chapter 12 of this title and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive Points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: And provided further, That tariffs proposing rates subject to the provision of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice.

49 U.S.C. Sec. 12(1); 62 Stat. 909.

§ 12(1) The Commission shall have authority, in order to perform the duties and carry out the objects for which it was created, to inquire into and report on the management of the business of all common carriers subject to the provisions of this chapter, and to inquire into and report on the management of the business of persons controlling, controlled by, or under a common control with, such carriers, to the extent that the business of such persons is related to the management of the business of one or more such carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted. The Commission may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this chapter; and may transmit to Congress from time to time such recommendations (including recommendations as to additional legislation) as the Commis-

sion may deem necessary. The Commission is authorized and required to execute and enforce the provisions of this chapter; and, upon the request of the Commission, it shall be the duty of any United States attorney to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this chapter the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

49 U.S.C. Sec. 13(1); 49 Stat. 543.

§ 13, par. (1). Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the

common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.